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No. 09-

In the
Supreme Court of the United States

Terrance Morris, Rosalind Morris
& Ricardo Morris,
Petitioners,

v.

Jarrett Lanpher & Robert Schweitzer
Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit

Petition for Writ of Certiorari

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Questions Presented

The Family says, "If the detective, Lanpher, had told the good judge everything, the judge would have checked bare suspicion, and kept us safe from fear."

1. The Supreme Court has never ruled on qualified immunity at summary judgment on a 42 U.S.C. §1983 *Franks v. Delaware* false and incomplete search warrant application claim.

What is the correct analysis?

2. Regarding *Franks v. Delaware* artful or reckless omissions, does not *United States v. Arvizu* and *Illinois v. Gates* "totality of the circumstances" analysis establish that every fact that the detective knows that makes particularized suspicion less likely is, automatically, material to a suspicion/probable cause determination, at least until, all such facts are put on the balance and the determination is made?

3. In *Neil v. Biggers,* the Supreme Court stated factors relevant to eyewitness misidentification.

Eighth Circuit Model Criminal Jury Instruction §4.08. Eyewitness Testimony, is a *Telfaire* instruction that tells the jury what factors erode the reliability and weight of an eyewitness identification.

Did the Eighth Circuit violate *United States v. Arvizu* and *Illinois v. Gates* "totality of the circumstances" analysis when it ruled that evidence which established *Biggers* and *Telfaire* factors was immaterial to a Rule 56 suspicion/probable cause determination, even though, a photo lineup misidentification was the most important fact suggesting particularized suspicion to the warrant judge?

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Opinions & Orders Below

The opinion of the United States Court of Appeals is reported at 563 F.3d 399 and reprinted in this Petition's Appendix at 1a-8a. The district court order is unpublished. It is reported at 2007 WL 869498, and reprinted in the Appendix at 9a-30a.

Jurisdiction

The United States Court of Appeals filed judgment April 24, 2009, and denied timely petition for rehearing on June 8, 2009. This Court has jurisdiction according to 28 U.S.C. §1254(1).

Constitutional Provisions, Statutes & Rules

The *Seventh* Amendment provides:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,"... U.S. CONST. amend, VII.

The following are lengthy and reprinted in this Petition's Appendix:

The Fourth Amendment to the United States Constitution, U.S. CONST. amend, IV, App. 35a;

FED.R.CIV.P. 56. Summary Judgment, App. 35a-37a;

W.D.Mo. Local Rule 56.1 Summary Judgment Motions, App. 38a-39a;

FED.R.CIV.P 49. Special Verdicts and Interrogatories, App. 39a-41a;

42 U.S.C. §1983 (2008), App. 41a; and,

Eighth Circuit Model Criminal Jury Instruction §4.08. Eyewitness Testimony, App. 42a- 46a.

Statement of the Case

"The kicked-in door is the symbol of a rule of fear and violence fatal to institutions founded on respect for the integrity of man." *Monroe v. Pape*, 365 U.S. 167, 209 (1961) (Frankfurter, J., dissenting)

In *Hudson v. Michigan*, 547 U.S. 586 (2006), the Supreme Court held that the 42 U.S.C. §1983 civil case and increasing police professionalism are *available* and *effective* deterrents to Fourth Amendment violations. *Id.*, at 596-599.

If that should be true, then what about the Professionals in Kansas City and Middle America?

In *Galloway v. United States*, 319 U.S. 372 (1943), Justice Wiley Rutledge wrote the opinion of the Court. Justice Hugo Black wrote the opinion that respected the Framers' Seventh Amendment.

Forty-three years after *Galloway,* came the *Summary Judgment Trilogy*.[1] Ever since then, the Framers' Seventh Amendment has been whipped and scourged because the *Trilogy* confuses many; and, in that confusion, the artful seduce the naive into surrendering virtue, and, undeserved summary judgment.

Now is the best time for this Court to restore the Framers' Fourth and Seventh Amendments; and, to give a respectable law-abiding Family a chance to protect itself from shortcuts that violate the separation of powers and, equal justice under law.

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1. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)

A Respectable Family is Denied Due Respect

Mrs. Rosalind Morris goes to work and pays her taxes and obeys the law. Ricardo Morris and Terrance Morris are her sons. Mrs. Morris raised them well, with plenty of love, and, with firm instruction. Because of her and her loving care and guidance, Ricardo and Terrance were good boys, who grew up to become, fine young men. Ricardo and Terrance are Sons that make a Mother proud.

Like Mrs. Morris, Ricardo and Terrance graduated high school and go to work and pay their taxes and obey the law. Ricardo and Terrance head their own families now and they meet their responsibilities. Mrs. Morris is Grandmother now. This Grandmother and her sons, Ricardo and Terrance, are respectful and respectable. This Family and its front doors, faces and teeth warrant respect; as much respect as any honest law-abiding American family, as much respect as any federal judge's family.

But, that is this case's problem. A respectable law-abiding Family has been denied its due respect.

First, Lanpher the detective denied due respect by not telling the warrant judge about the *Kansas City Style* photo lineup that he invented.[2] The immediate consequence of that disrespect was a kicked-in front door, and, a kicked-in face.

Next, Lanpher's bosses at the Kansas City, Mis-

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2. The *Kansas City Style* photo line-up is one where a surviving victim never sees his attackers' faces during the attack, and, the detective does a photo lineup anyway so that he can turn bare suspicion into probable cause and get a search warrant.

souri, Police Department (KCPD) denied due respect by never investigating Lanpher's magnificently mistaken invention. Even though the Family followed the KCPD's own complaint process, nobody from the KCPD tried to find out why an inventive Kansas City detective sent a Kansas City SWAT team on a fool's errand to give a law-abiding Kansas City Family a kicked-in Kansas City front door, and, a kicked-in Kansas City face. In Kansas City, police professionalism does not amount to much.

Then, the district court and the Eighth Circuit denied due respect by misapprehending suspicion/ probable cause and Rule 56[3] precedent; and, by never replacing their burnt-out "most favorable to the non-moving party" light bulbs.

The judges below naively sided-up with one of the all-time bumblers in the history of cops and robbers. On every single fact issue, the judges below adopted, verbatim, exactly what the bungling detective said, or, the exact excuse that the bungling detective gave for not telling the warrant judge important information that diminished particularized suspicion.

The Supreme Court never commended verbatim adoption of moving party defendants' fact arguments and excuses at summary judgment. It seems impossible for a judge to do that, unless, the Rule 56 "most favorable to the non-moving party" light bulbs are burnt-out. The courthouses in Middle America need new Rule 56 light bulbs because experienced judges in Middle America are so confused, by the *Trilogy*, that they do not understand that the Family can use evi-

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3. FED.R.CIV.P. 56. Summary Judgment.

dence Lanpher created and Lanpher's deposition testimony to counter his summary judgment version of events.

The *Trilogy* so confuses the judges in Middle America that they do not know that when the Family points out that Lanpher created evidence that supports the Family's side of a contested fact issue, the Family is not asking the judges to make a final credibility determination of Lanpher. No, the Family is simply pointing to evidence that supports the Family's winning closing argument to the theoretical Rule 56 jury on a contested fact issue.

The *Trilogy* so confuses the judges in Middle America that they do not know that argument is allowed at summary judgment. The idea that the non-moving party is given the benefit of reasonable inferences at Rule 56 summary judgment means that inferential argument is allowed. The Rule 56 directed verdict test means that Lanpher has to make a closing argument to the theoretical Rule 56 jury that *always* convinces *every* reasonable juror that Lanpher's side of the fact story is *always* more believable. The Rule 56 directed verdict test means that the Family gets its chance to make a make a closing argument to the theoretical Rule 56 jury that *could* convince *one* reasonable juror that the Family's side of the fact story is more believable. By definition and law, argument is necessary at Rule 56 summary judgment. Argument is not forbidden. How could it be?

Judges in Middle America have a constitutional duty to apply the law in the books to the evidence in the record. At Rule 56 summary judgment, the "evi-

dence" to which the law is applied is the "evidence" detailed in the light most favorable to the Family.

Once upon a time, Judge Richard S. Arnold was an exemplary judge in Middle America. A recently published biography said this about him:

> Arnold had well-known views about how all judicial opinions should be written. Most important, he believed opinions should be written for the losing side of the case, so that the person (not the lawyer) could understand the reasons for losing. "I think about losing litigants a lot," Arnold once said. "Those are the people who need to understand that they have been heard-that a reasoning creature of some kind has evaluated their argument and come to some sort of defensible conclusion about it. .....
>
> A former law clerk recalled Arnold's admonition: "When you draft an opinion, always write to the losing side. Write to those most difficult to persuade." An opinion should address as many of the losing side's arguments as necessary to convince them that the arguments had been considered. (....) Arnold believed that, "the art of judging well, and an opinion's precedential power, rely on the ability to persuade others of the rightness of a decision rather than on the gun behind the pen." POLLY J. PRICE, JUDGE RICHARD S. ARNOLD: A LEGACY OF JUSTICE ON THE FEDERAL BENCH 354 (2009).

If the judges below had made the effort to write a convincing opinion in the manner of Judge Arnold, then all of them would have realized it impossible to

grant summary judgment to the inventor of the *Kansas City Style* photo lineup. How could you have probable cause from a photo lineup if a shooting victim never sees the shooters' faces?

Judge Arnold died September 23, 2004. Naturally, a judge so great would be missed in Middle America, no matter what. However, Judge Arnold's passing should not mean that respect to litigants and the law departed, at the same time, in Middle America. This Court should intervene to make sure that Rule 56 rulings in Middle America demonstrate respect for the Rule 56 standards established by this Court. The district court order and Eighth Circuit opinion are unsound, disrespectfully and constitutionally unsound.

This Court should restore Judge Arnold's lost legacy in Middle America, because Respect to a Respectable Family and Respect to the Framers' Fourth and Seventh Amendments is missing in Middle America.

Why talk of Respect and the Framers? Because, in a case like this, where *all* parties have made an *enforceable* jury demand in accord with the local rule and Rule 38,[4] the Seventh Amendment right to jury determinations of the fact controversies in a civil case applies. If one side moves for summary judgment, the judge could make a ruling that *prevents* jury determinations of the fact controversies *after* a courtroom presentation of the parties' evidence *and* argument.

The Family says that if a judge enters a summary judgment *without* the genuine Rule 56 review of the evidence required by this Court's Rule 56 precedents,

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4. FED.R.CIV.P. 38. Jury Trial of Right.

then the Framers' intention that the civil jury determine the fact controversies has been thwarted. It is not so much the Family's *right* to have a jury determine the fact controversies. It is, instead, the judges' *responsibility* to honor the Framers' Seventh Amendment by respecting this Court's Rule 56 precedents and conducting *genuine* Rule 56 evidentiary review and *genuine* Rule 56 directed verdict tests on the key case controversies.

The district court order and Eighth Circuit opinion do not demonstrate *genuine* Rule 56 evidentiary reviews. Nor do they demonstrate *genuine* Rule 56 directed verdict tests. Every opinion or order granting a summary judgment should demonstrate both.

The Family's Seventh Amendment constitutional birthright means that the Family's Rule 56 birthrights warrant respect.

A respectable Family is due an explication of "facts" that demonstrably states the summary judgment evidence in the light most favorable to the Family. That is a Rule 56 birthright. The judges below never stated the summary judgment evidence in the proper light. They did not even come close. They never even tried.

Before a judge closes a federal courthouse door on a respectable Family and its winnable case, that Family is due a restatement of the best arguments it made to the theoretical Rule 56 jury on the factual and legal controversies in the case. That is a Rule 56 birthright. The judges below did not restate the Family's very best arguments. Not only is the Family due a restatement of its best arguments, the Family is also due a satisfactory explanation as to why its very best arguments

never convince the *consensus* Rule 56 juror. That is a Rule 56 birthright. The judges below did not explain exactly why *every* reasonable juror would *always disagree* with the Family's best arguments on the key controversies. They did not even come close to stating and defeating the Family's best arguments to the Rule 56 jury. They never even tried.

As explained in this Petition, one reason this case is here is that the Family was given seriously wrong Rule 56 analyses on a naturally complicated case. The Family says that a seriously wrong Rule 56 analysis is not *merely wrong*. Because of the Framers and their Seventh Amendment, a seriously wrong Rule 56 analysis is unconstitutionally wrong, and this Court should not condone the *merely unconstitutional*.

If anyone thinks this Court should suffer gladly the *merely unconstitutional*; and, only take cases with discrete legal errors and questions, please know that the district court and the Eighth Circuit invented revolutionary exceptions to *United States v. Arvizu*, 534 U.S. 266 (2002) and *Illinois v. Gates*, 462 U.S. 213 (1983) "totality of the circumstances" suspicion/probable cause analysis that would exclude facts *known* to the affiant that make particularized suspicion *much less* likely. Does not totality mean all? That is what the dictionaries and the law books say.

The analysis required for ruling on qualified immunity at summary judgment on a 42 U.S.C. §1983 *Franks v. Delaware*, 438 U.S. 154 (1978) false and incomplete search warrant application claim is complex. There may just be four and twenty subsidiary questions baked into the pie. Splits have arisen between,

and within, the United States Courts of Appeals on certain of the subsidiary questions. Any such case would be a worthy dish to set before this Court. This case is even better because a *law-abiding* Family brings a *well-developed* record.

However, the Family says that this Court should cut into this pie and listen to the songs its birds sing because of all the reasons above, including the seriously wrong Rule 56 analyses, because this worthy Family is likely not the only one to get a federal courthouse door closed on its winnable case because Rule 56 confusion and burnt-out Rule 56 light bulbs make it too easy for worldly defense lawyers to persuade black-robed ingénues that surrendering their Rule 56 and Seventh Amendment virtue is the path to docket freedom, and, the happily ever after.

This case is about the closing of that federal courthouse door in Kansas City. It is also about the Family's front door. A law-abiding Family getting its front door kicked-in is a big deal. A law-abiding member of a law-abiding Family getting his face kicked-in is a big deal. A law-abiding Family that gets its door and one of its faces kicked-in because a detective invents the *Kansas City Style* photo lineup shortcut to a search warrant deserves the opportunity to convince a Kansas City jury that the detective was illegally artful or illegally reckless when he invented it.

The Family's Claim

The Family brings this 42 U.S.C. §1983 case asserting a *Franks v. Delaware* false and incomplete search warrant affidavit/application claim against Lanpher, and his supervisor, Schweitzer.

The Family claims that if Lanpher had truthfully and completely recited to the warrant judge the true details of all the facts he learned, the warrant judge would have found bare suspicion, not probable cause, and he would not have issued the warrant.

The Family claims that if the warrant judge had found bare suspicion, then the KCPD would not have sent a tactical team with rifles, helmets, boots and a battering ram to their house to kick-in the door and kick-in the face.

The Family claims that if Lanpher had done what he was supposed to do when stuck at bare suspicion, he could have easily confirmed that this Family was law-abiding and innocent without kicking-in the door and kicking-in the face.

The Family claims that Lanpher's affidavit/ application is false. False because Lanpher omitted from the warrant judge's consideration *every* fact known to him that weighed in favor of particularized exoneration of the Sons, Terrance and Ricardo. It is false because the included "facts" that weigh in favor of particularized suspicion are not accurately stated. It is false because Lanpher broke *every* rule of eyewitness identification law to invent his *Kansas City Style* photo lineup.

Franks v. Delaware provides the Family two alternate paths to reach the destination of accountability for the *Kansas City Style* photo lineup inventor. One path is deliberate dishonesty. The other path is reckless falsity. *Franks*, 438 U.S., at 165, and 171.

Anyone that does a *genuine* Rule 56 review of this case's record realizes that the Family does not need to

escort Lanpher down the path of reckless falsity. Lanpher runs 117 miles per hour down that road, all by himself. *see* Motions, Memoranda and Evidence Below, App. 47a-213a. Please *see also*, Appellants' Reply Brief, pp. 11-23.

Lanpher left out every fact that would have let the warrant judge know that Lanpher was going the wrong way. In this record, Lanpher's reckless falsity is self-evident. That is enough to seat a real live jury to decide the real life facts.

The deliberate dishonesty path is also available. The evidence and the Family's argument, meets the Rule 56 standard that Lanpher was, at least arguably to the *consensus* reasonable juror, artfully untruthful; and, that Lanpher was perfectly aware of his artful dishonesty.

After learning that Ricardo was at work and not involved, Lanpher never went back to the hospital to speak with the shooting victim that had, according to Lanpher, made a photo lineup identification of Ricardo as the shooter. Lanpher surprised everyone when he broke that news at his deposition. *see* App. 75a, ¶90; and App. 137a-139a, 149a-151a, Lanpher Dep., 40:2-40:25, 51:7-53:6, 111:8-113:5. The Family had to cite three passages of deposition testimony to establish that astonishing fact because neither Lanpher's lawyer nor the Family's lawyer could believe it until the third time Lanpher told them. Would not a jury be as surprised by that fact as the lawyers were? It obviously makes the rest of Lanpher's story smell like rat. Anybody knows that an honestly mistaken detective would want to know what went wrong?

Lanpher never went back because he already knew what went wrong. What went wrong was that Lanpher told an artful fib to take an unconstitutional shortcut. Please *see also,* Appellants' Reply Brief, pp. 23-30.

Jurisdiction for the Family's Claim

The district court's jurisdiction on a 42 U.S.C. §1983 claim was pursuant to 28 U.S.C. §§1331 and 1343(a)(3)&(4). The Eighth Circuit's jurisdiction was pursuant to 28 U.S.C. §1291.

Factors for Reliable Eyewitness Identification

The *Kansas City Style* photo lineup was the key fact in Lanpher's warrant affidavit/application. This Court has identified factors relevant to reliable eyewitness identification. *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972). Also, Eighth Circuit Model Criminal Jury Instruction §4.08. Eyewitness Testimony, is a *Telfaire* instruction that tells the jury what factors may erode the reliability and weight of an eyewitness identification. App. 42a-43a. For this Petition, and, the later briefing in this case, the Family will refer to these as numbered *Biggers* and lettered *Telfaire* factors.

The value of identification testimony depends on:

Biggers 1. The opportunity of the witness to view the criminal at the time of the crime. You may consider in that regard, such matters as:

> *Telfaire* A. The length of time the witness had to observe the person in question.
>
> *Telfaire* B. The prevailing conditions at that time in terms of visibility or distance and the like.

Telfaire C. Whether the witness had known or observed the person at earlier times.

Biggers 2. The witness' degree of attention.

Telfaire D. In general, a witness uses his or her senses to make an identification. Usually the witness identifies an offender by the sense of sight -- but this is not necessarily so, and other senses may be used.

Biggers 3. The accuracy of the witness' prior description of the criminal.

Telfaire E. You should also consider whether the identification made by the witness after the offense was the product of [his] [her] own recollection. You may consider, in that regard,

Biggers 4. The level of certainty demonstrated by the witness at the confrontation.

Telfaire F. The circumstances under which the identification was made.

Biggers 5. The length of time between the crime and the confrontation.

Telfaire G. You may also take into account that an identification made by picking the defendant out of a group of similar individuals is generally more reliable than one which results from the presentation of the defendant alone to the witness.

Telfaire H. If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to [him] [her] for identification, you should scrutinize the identification with great care.

Telfaire I. You may take into account any occasions in which the witness failed to make an identification of the defendant, or made an identification that was inconsistent with [his] [her] identification at trial.

The Reader should consider these *Biggers* and *Telfaire* factors in determining the state of the Rule 56 predicate and ultimate "facts" relevant to the mistaken photo lineup misidentification. If Lanpher had disclosed to the warrant judge the facts he knew that would render the photo lineup meaningless and overly suggestive according to the *Biggers* and *Telfaire* factors, the warrant judge would not have issued a search warrant.

Statement of Facts & Inferences

The Family outlines the basic facts and also states its inferences from the evidence in this statement. For the full picture of the parties' evidence and argument Please *see* Motions, Memoranda and Evidence Below, App. 47a-213a, which includes digests of the parties' respective statements of purported material facts; opposing responses to purported material facts; citations to evidence; much of the evidence; and, arguments made to the district court. For arguments to the Eighth Circuit, Please *see* Case: 08-2040.

Simulating Rule 49[5] to Clarify Rule 56 Analysis

The qualified immunity doctrine complicates the analysis in a 42 U.S.C. §1983 case because it is a legal question that almost always requires the prior resolution of the case's fact controversies.

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5. FED.R.CIV.P. 49. Special Verdict; General Verdict and Questions. *see* App. 39a-41a.

> "The issue of qualified immunity, however, is frequently intertwined with unresolved factual questions. Where, ..., factual questions prevent a district court from ruling on the issue of qualified immunity, it is appropriate to tailor special interrogatories specific to the facts of the case. This practice allows the jury to make any requisite factual findings that the district court may then rely upon to make its own qualified immunity ruling." *Littrell v. Franklin*, 388 F.3d 578, 585 (8th Cir. 2004)

As the quoted passage establishes, the judges in Middle America are smart to use Rule 49 special interrogatories to let the jury answer the fact questions about what happened. The judge can then decide qualified immunity by applying clearly established law to what the jury figured to be the true facts.

Rule 49, used wisely, preserves the jury's Seventh Amendment role at a trial involving complicated mixed law-fact determinations like qualified immunity. Rule 49 also provides guidance on how to separate the fact controversies from the legal controversies at Rule 56 summary judgment. The judges in Middle America should identify the specific fact controversies identified, restate the best arguments made by the parties from the evidence, and then explain if and why the moving party arguments is always more convincing to the consensus Rule 56 juror. Now, here is what happened in Kansas City.

The Family

In July 2003, the Family, Rosalind Morris and her sons, Ricardo and Terrance, lived together in Kansas

City. All in the Family work real jobs and none are criminals. App. 59a-60a, ¶¶29-31

The Neighbor

A man named [Richard] lived nearby, around the corner, three houses down. The distance between the properties is less than 150 feet. From [Richard]'s back porch you can see the Family's front porch. [Richard] had lived there at least two months, maybe longer. [Richard] did not know any member of the Family. App. 154a. [Richard]'s Handyman, Jason, met Ricardo and Terrance through another friend, and they had played basketball a few times. Handyman Jason only knew their nicknames, Dink and Mont. App. 162a

A Nighttime Shooting

On Monday night, July 28, 2003, at 8:57 PM, Ricardo clocked-in at work and worked until after midnight. App. 207a.

At 11:00 PM, well after dark and while Ricardo was at work more than 20 miles away, two gunmen attacked [Richard] and shot him thrice. [Richard] survived. App. 61a, ¶¶32-33.

Coe's Report: An "Am I Dying?" Declaration

Before paramedics took [Richard] to the Emergency Room, KCPD officer Coe took [Richard]'s statement that two suspects shot him "with a 9 MM" after they kicked-in the back door. App. 93a-94a.

Coe's report proves that [Richard] never named or described his attackers. Coe's report states that the two suspects are black males, but Coe recorded *unknown* for name, estimated age, height, weight, build, hair, eyes and clothing in the blocks provided on the KCPD Field Incident Report which prompt the re-

sponding officer to ask the right questions. Coe did not write *unknown* in the complexion, hat, and coat blocks, he left those blank. Coe recorded [Richard]'s first name and misspelled [Richard]'s last name, that must mean something. App. 93a-94a.

Coe's Report proves that [Richard] never saw his attackers clearly since he only described their race and gender. [Richard] would have figured out race and gender without a good look, since they spoke during the attack. *see* "I don't want to kill you." App. 153a; *see also* "[Richard] had told [Handyman Jason] that the dudes asked him for the money." App. 162a

Also, [Richard] must not have seen or recognized his attackers as anyone whose name and face he knew since he never told a name to Officer Coe. [Richard] did not know that he would survive. He would have said who did it if he recognized the attackers' faces.

Lanpher never told the warrant judge that [Richard] never named or described his attackers when [Richard] thought he might die. App. 201a-203a.

Willingham's Statement

Right after the shooting, KCPD Detective Eikel interviewed Willingham, the neighbor on the south. App. 96a-97a.

Willingham told Eikel that [Richard]'s house was a drug house and gave other information. Willingham never mentioned the Family or its Home. App. 96a-97a.

Lanpher never told the warrant judge that [Richard]'s house was suspect.

The Tools of [Richard]'s Trade

The KCPD officers at [Richard]'s house got a search warrant for the crime scene investigation and KCPD CST Hagen made a complete report. App. 98a-107a. KCPD Criminalist Jansen did lab analyses of items found. App. 108a-109a.

Hagen discovered tools of [Richard]'s trade: two expensive gram scales for weighing narcotics had Cocaine dust; plastic bags contained Marijuana. [Richard] not only seemed to sell illegal drugs, he also seemed to use them. There was Marijuana on a bedroom dresser, and Marijuana and an unrolled cigar wrapper on the kitchen counter. App. 100a-102a; and App. 108a-109a.

[Richard] must have been making a marijuana cigar in the kitchen when he was attacked.

The KCPD discovered other tools of [Richard]'s trade and, that [Richard] expected violence. [Richard] kept a Mossberg 12-gauge pump-action shotgun under his bed, loaded with a live shell in the chamber, the safety off, and four other live shells in the magazine. That means that it was ready to fire. All he would have to do is pick it up, point it and pull the trigger. After firing, he could pump the next round into the chamber and fire again. Five shells total, ready to use. App. 102a-104a.

[Richard] also had a Bushmaster AR-15 assault rifle almost as ready to use as the shotgun, with two magazines taped together and loaded. [Richard] had more than 700 bullets for that assault rifle. The KCPD found more kinds of bullets than kinds of guns to fit the bullets. App. 102a-104a.

Viewing the Hagen Report in the Rule 56 light,

[Richard] was a heavily armed drug dealer who smoked dope and expected violence. Also, the attackers must have surprised [Richard] and attacked him suddenly since he was not able to get to his ready-to-fire weapons and fight back. In light of that and other evidence, it happened so fast that [Richard] never saw their faces. [Richard] never described their faces and he never said he saw them. *see* App. 47a-213a.

Lanpher never told the warrant judge about [Richard]'s guns, ammunition and drug dealing equipment; and, that [Richard] was so busy making his marijuana cigar in the kitchen that he did not have time to get his guns and resist the attack.

The Plainly Not Competent

The next morning, Schweitzer, the supervisor, assigned Lanpher to investigate the shooting of [Richard]. Lanpher and Schweitzer never solved the case. Lanpher blamed [Richard] for that. Lanpher said [Richard] was unable to identify suspects and never cooperated. App. 212a-213a.

Is it surprising that [Richard], with illegal drugs, drug dealing equipment and lots of guns and ammunition would not cooperate with the police investigation? Do guys like that ask the police for help? Urban drug dealers prefer to settle their own scores, and the last thing they want is a reputation for "snitching." Prudent detectives and prudent warrant judges know that guys like [Richard] are not reliable truth-tellers.

Jason the Handyman and his ATV

Jason, [Richard]'s Handyman, scared silly because his drug-dealing benefactor was almost killed, had many adventures the day after the shooting.

You should review all the reports of Handyman Jason's witless adventures to get the full picture of how out of sorts he was. App. 111a-118a, and 159a-163a.

Somehow, in Lanpher's mind, Handyman Jason became the Suspected Handyman Murder Mastermind on a 4-Wheeled Motor Scooter even though he is visiting his boss and buddy [Richard] and [Richard]'s family at the hospital and running errands for [Richard] the day after the shooting.

The most innocent thing that Handyman Jason did during his wild day was knock on the Family's door to see if they had seen or heard anything about the nearby shooting of his beloved boss. *see* App. 111a-112a, and 162a-163a. After you read this case's history and consider that Lanpher concluded that [Richard] was uncooperative and could not identify his attackers; App. 212a-213a; you could conclude that the biggest reason that Lanpher manufactured probable cause and sent a tactical team to kick-in the Family's front door, was that innocent knock on that same door by Handyman Jason.

Lanpher used Handyman Jason as a witness in his original affidavit for a search warrant. But, Lanpher never told the warrant judge that the Handyman was under arrest for running from the police while he was running for his life on his Handy 4-Wheeled Motor Scooter, and, for being a convicted felon with a gun. App. 203a; and App. 159a.

The Handyman did prove to be a better detective than Lanpher or Schweitzer, at least he got [Richard] to *describe* the assailants to him as "two black dudes" "<u>one</u> of them was <u>stocky</u> and the <u>other</u> a <u>short dude</u>."

App. 161a-162a. Those descriptions excluded Ricardo and Terrance, who are both tall and slim. App. 132a-136a, Lanpher Dep. 33:14-38:16; App. 164a-165a; App. 69a ¶57; App. 70a ¶59(5). Somehow, Lanpher and Schweitzer never asked [Richard] to describe the attackers. App. 93a-94a; App. 152a-154a; App. 120a-122a, Lanpher Dep. 16:1-18:22.

Lanpher should have used the cue from Handyman Jason to realize that he is supposed to ask a surviving shooting victim for a description of the attackers, especially, if he ends up doing a photo lineup. However, Lanpher never quite figured that out; and, Lanpher never told the warrant judge about the description that excluded Ricardo and Terrance. App. 201a-203a.

Lanpher's Summary Judgment Hearsay

At 7:19 PM, after Handyman Jason's visit with [Richard] at the hospital, and, the Handyman's 4-Wheeled Motor Scooter adventures and arrest, Lanpher interviewed [Richard] at the hospital. App. 152a-154a.

Lanpher made reports of the interviews he conducted. Those interview reports are relevant to predicate fact controversies in the case; and, they raise a Rule 56 evidentiary review issue that this Court must explain to the judges in Middle America.

Lanpher's reports are hearsay admitted under a business record exception. In terms of recording the exact words spoken during the interviews, the reports are not as reliable or precise as a court reporter's transcript, or, a videotape of the interview would be. Lanpher wrote the interview reports, hours after the interviews, on his computer at the KCPD Headquarters

relying on his memory and the handwritten notes that he promptly destroyed. App. 120a, Lanpher Dep., 16:1-4. About his handwritten notes and his interview reports, Lanpher testified, "I don't type down question one, answer, question two, answer." App. 123a, Lanpher Dep., 19:21-23. Lanpher also testified, "No, I did not say that I wrote the questions I asked him down in the report. I said what we talked about, discussed, and the information I obtained from him is in this report." App. 124a, Lanpher Dep., 20:14-17.

The way that Lanpher created his interview reports makes them unreliable and ambiguous, at least to the degree that the reports can not be unassailable when Lanpher *moves* for summary judgment. Please consider this holding from an important Rule 50[6] case:

> In the analogous context of summary judgment under Rule 56, we have stated that the court must review the record "*taken as a whole.*" [T]he standard for granting summary judgment "mirrors" the standard for judgment as a matter of law, such that "the inquiry under each is the same." It therefore follows that,...., the court should review *all of the evidence in the record.*
>
> In doing so, however, the court must draw all reasonable inferences in favor of the *nonmoving* party, and it may not make credibility determinations or weigh the evidence. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge."

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6. FED.R.CIV.P. 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling.

> Thus, although the court should review the record as a whole, it must *disregard* all evidence *favorable* to the *moving party* that the *jury is not required to believe*. That is, the court should give credence to the evidence favoring the nonmovant as well as that "evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from *disinterested* witnesses." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U. S. 133, 150-151 (2000) (internal citations omitted) [emphasis added]

Please understand this important Rule 56 concept, business records admitted as an exception to hearsay at summary judgment, are to be viewed in the light most favorable to the Family. Ambiguities in those records can be resolved in favor of the Family, especially when other evidence in the record controverts Lanpher's Lawyers' summary judgment interpretation of the ambiguity. Interview reports created by Lanpher that are, admittedly, not verbatim reflections of the conversations depicted, are subject to normal Rule 56 scrutiny.

The Rule 56 jury is not required to believe the *Kansas City Style* photo lineup inventor.

Judges in Middle America must not deny a law-abiding Family the opportunity to use the evidence as a whole to controvert Lanpher's admittedly inexact hearsay interview reports. Lanpher is not a *disinterested* witness, he is the party in the case and his competence, recklessness and forthrightness are at issue. Lanpher created the interview reports and he deserves

no presumption that they reflect competence, accuracy and honesty. Especially, considering that Lanpher also created the evidence that the Family uses to make a winning closing argument to the Rule 56 jury that defeats Lanpher's presentation to the same Rule 56 jury.

Inventing the *Kansas City Style* Photo Lineup

Remember, the *Kansas City Style* photo line-up is one where a surviving victim never sees his attackers' faces during the attack, and, the detective does a photo lineup anyway so that he can get a search warrant and find out if the barely suspected did the crime after all. No matter whether Lanpher invented the *Kansas City Style* photo lineup through conscious artfulness, or, reckless serendipity, Lanpher was Fourth Amendment duty-bound to tell the warrant judge these *Kansas City* facts describing its creation:

Kansas City 1. [Richard] never described his shooters' faces, clothing, hair or headgear, and, Lanpher never asked. App. 93a-94a; App. 152a-154a; App. 120a-122a, Lanpher Dep. 16:1-18:22; and

Kansas City 2. [Richard] never said if the lights were on, and, Lanpher never asked. App. 93a-94a; App. 152a-154a; App. 120a-122a, Lanpher Dep. 16:1-18:22; and

Kansas City 3. [Richard] never named anyone as his attackers before he was taken to the hospital, when he thought he might die, and Lanpher never asked about that when a discussion of *possible* suspects, Ricardo and Terrance, ended up being two persons whose faces and nicknames [Richard] knew *before* the attack App. 93a-94a; App. 152a-154a; App. 120a-126a, Lan-

pher Dep. 16:1-22:19; *see* Red brick house explanation: App. 89a-90a; and, App. 140a-145a, Lanpher Dep. 67:6-73:10; *see* Montgomery report and discussion: App. 110a; and, 175a-176a, ¶L; and

Kansas City 4. [Richard] never named anyone as his attackers when Lanpher asked him, 20 hours after the shooting, at the first hospital interview, "What happened?" App. 152a-154a; App. 125a-126a; Lanpher Dep. 21:13-22:19; and

Kansas City 5. [Richard] did not name anyone as his *possible* attackers until he hazarded a guess *after* Lanpher asked and demanded, "Who did this to you? Give me a name!" App. 122a, Lanpher Dep. 18:19-22; App. 153a-154a; and

Kansas City 6. The two nicknames that [Richard] gave as a hazarded guess in response to "Give me a name!" belonged to faces, Ricardo's and Terrance's, that [Richard] was familiar with, or, would have been familiar with, *before* the shooting. *see* Evidence cited in ¶¶3,5 above; and

Kansas City 7. Lanpher put together a photo lineup that includes the *possible* suspect neighbor, Ricardo, who lives three houses away from [Richard], and, whose face and nickname [Richard] knew *before* the shooting. *see* Evidence cited in ¶¶3,6 above; and

Kansas City 8. Of course, [Richard] recognized the *possible* suspect neighbor in the photo lineup, he already knew the face. They are neighbors. Of course, he knows what his neighbor looks like. App. 154a-158a; *see* Evidence cited in ¶¶3,6,7 above; and

Kansas City 9. Ricardo, the *possible* suspect

neighbor who was inevitably recognized in the photo lineup, has the specific identifying characteristic of protruding front teeth, *colloq.* "buck teeth," that any witness would automatically describe if that witness claimed to have seen Ricardo wash his car, sweep the sidewalk, build a snowman or do anything else. App. 157a, #6 photo; and

Kansas City 10. The extent of the physical description given by [Richard] of the attackers in the investigative file was two black males, one short and one stocky. App. 161a-162a; 93a-94a; App. 152a-154a; and

Kansas City 11. Based on the alert record computer checks he testified to, Lanpher knew that Ricardo was 6 feet tall, and 160-170 lbs., and Terrance was 6 feet, 1 inch tall, and 175 lbs. So neither Ricardo nor Terrance are short, neither are stocky; and, they are built similar. Also, the alert records checks show that no member of the Family had a history of any offenses except for traffic and ordinance violations. App. 132a-136a, Lanpher Dep. 33:14-38:16; App. 164a-165a; App. 69a ¶57; App. 70a ¶59(5); and

Kansas City 12. [Richard] would have been able to determine the race and gender of his attackers, even if the lights were off, and/or he never otherwise saw their faces, because the attackers yelled at him during the attack, and, most American voices indicate the race and gender of the speaker. *see* "I don't want to kill you." App. 153a; *see also* "[Richard] had told [Jason] that the dudes asked him for the money." App. 162a; and

Kansas City 13. [Richard] would have been able to determine the size and stature of his attackers, even if

the lights were off, and/or he never otherwise saw their faces, since he stated that he wrestled and struggled with at least one of them. App. 152a-153a; and

Kansas City 14. After Lanpher had asked and demanded, "Who did this to you? Give me a name!" and, after [Richard] hazarded a guess that the two *possible* attackers whose faces he never saw during the attack might be his neighbors, Ricardo and Terrance, whose nicknames and faces [Richard] already knew *before* the attack, then Lanpher puts the cherry on the *Kansas City Style* photo lineup sundae, by cobbling together a photo lineup that includes a picture of Ricardo, three houses away, buck teeth and all, and then giving the photo lineup to [Richard] and asking if [Richard] "*recognizes* anybody in this lineup as the person that *may be involved* in the incident." App. 131a, Lanpher Dep. 28:8-29:1, and *see* Evidence cited in ¶¶1-13 above.

Kansas City 15. So that is how to invent the *Kansas City Style* photo lineup. *After* you never get a description that would confirm that the victim saw his attackers' faces; and, *after* the victim never names anybody during his first two opportunities to say who did it; *then* you invite the victim's hazarded guess *by* demanding, "Who did this to you? Give me a name!"; *then* after you get that name that you demanded, you bring the victim a picture of the person named, without any regard for the most likely possibility that he knows his neighbor's face if he knows his neighbor's name, and then you ask the victim if he "*recognizes* anybody in this lineup as the person that *may be involved* in the incident." Now, the Family does not think that you have to be that brilliant to figure out that Lanpher played "Give me a name! I'll bring you his picture. I'll

get a search warrant to find out if they did it."

If Lanpher had told the warrant judge the Facts stated in *Kansas City* ¶¶1-15 above, the warrant judge would not have issued the warrant because it only adds up to bare suspicion. "Give me a name! I'll bring you his picture," always only adds up to bare suspicion."

No warrant judge would issue a warrant with a photo lineup so meaningless and suggestive according to the *Biggers* and *Telfaire* factors and common sense. That is not probable cause. That is bare suspicion. Everybody should know that.

The Family prays that someone that works at the Supreme Court building is able to figure out something that is not that difficult to understand.

Going to the Warrant Judge

After playing "Give me a name! I'll bring you his picture," and inventing the *Kansas City Style* photo lineup. Lanpher swore his Affidavit before the warrant judge, who then issued a search warrant to enter the Family's Home. App. 201a-203a.

The Family proposes its *Franks* Corrected Affidavit/Application for Search Warrant as the one Lanpher should have submitted because it describes the *United States v. Arvizu*, 534 U.S. 266 (2002), *Illinois v. Gates*, 462 U.S. 213 (1983) "totality of the circumstances." App. 166a-200a.

A Kicked-in Door and a Kicked-in Face

As a result of the search warrant, the KCPD assembled a tactical entry team to kick-in the Family's front

door and kick-in Terrance's face. No single item was seized pursuant to the Search Warrant. App. 72a, ¶77.

Terrance was booked, detained, and questioned. App. 73a, ¶80.

When Mrs. Morris was allowed to go in her house, she discovered the damage to the front door and its frame. The Family's house was in disarray with everything tossed about. App. 72a-73a, ¶78.

When Lanpher departed, he left his business card with Mrs. Morris and asked to have Ricardo call and assist with the investigation. App. 73a, ¶79. Mrs. Morris contacted Ricardo and he promptly reported to KCPD Headquarters for detention and questioning. Lanpher asked Ricardo where he was during the shooting. Ricardo told Lanpher that he was at work. App. 207a-208a.

Lanpher confirmed with Ricardo's employer that Ricardo was at work during the shooting and then he released Ricardo and Terrance from jail. App. 207a-208a.

Lanpher never went back to the hospital to speak with [Richard] and tell him that Ricardo was cleared of suspicion, or, presumably, to show the brand new booking photos of Terrance for a photo lineup of Terrance. App. 137a-138a, 138a-139a, 149a-151a; Lanpher Dep., 40:2-40:25, 51:7-53:6, 111:8-113:5.

After the *Kansas City Style* photo lineup and search warrant execution, Lanpher and his supervisor, Schweitzer, quit trying to solve the shooting. App. 212a-213a.

The Family reported the incident by filing a complaint with the KCPD Board's Office of Citizen Com-

plaints. Mrs. Morris wanted the complaint investigation to evaluate the quality of the investigation conducted by Lanpher and Schweitzer, and, to find out why a tactical team kicked in her house when nobody in her Family had done anything wrong. App. 74a, ¶84.

As a result of the complaint, OCC directed the KCPD Internal Affairs unit to investigate only the kicked-in face, but never investigated the kicked-in door and Lanpher's *Kansas City Style* photo lineup. App. 74a, ¶85; App. 208a-211a.

Reasons for Granting the Petition

Reason 1

The 42 U.S.C. §1983 *Franks v. Delaware*, 438 U.S. 154 (1978) false and incomplete search warrant application claim is the most unique qualified immunity police misconduct case and this Court has never heard one, in fact, this Court has never re-visited *Franks* in any context.

The analysis required for ruling on qualified immunity at summary judgment on a 42 U.S.C. §1983 *Franks v. Delaware* false and incomplete search warrant application claim can be complex, because of the mixed law-fact questions for probable cause, qualified immunity, and *Franks* knowing artfulness or reckless falsity.

The Family proposes the following analysis, as the right approach.

Initially, the Family proposes its *Franks* Corrected Affidavit/Application for Search Warrant. App. 166a-

200a. The Family's *Franks* Corrected Affidavit is its proposed answer to an important ultimate fact question:

What was the Rule 56 "totality of the circumstances" known to Lanpher when he made the original affidavit?

After the Family proposes its *Franks* Corrected Affidavit, then the next steps are for the Court.

First, read the Family's affidavit and ask,

"Would a *prudent* judge, issue a search warrant based on *this* affidavit?" **No?**--then:

"Would *the* imagined objectively reasonable detective expect a *prudent* judge to issue the warrant on *this* affidavit?" **No?**--then:

"Is *this* affidavit supported by Rule 56 review of the evidence; and, does *it* reflect the "totality of the circumstances" known, or, *arguably* known, to Lanpher when *he* swore out the original affidavit?" **Yes?**--then:

Compare the Family's affidavit to Lanpher's original App. 201a-203a.; review *all* evidence according to Rule 56 standards; find the *very best* closing argument the Family makes to the imagined Rule 56 jury; and ask:

"Could *any* reasonable juror agree with the Family's best argument that the differences between the two affidavits result from "deliberate dishonesty" and/or "reckless disregard for the truth?" **Yes?**--then:

Open Up the Courthouse, so that the Family can try its winnable case against the *Kansas City Style* photo lineup inventor and his complicit supervisor.

This Court has not revisited *Franks* since its birth 31 years ago. Unsurprisingly, the legal standards on the mixed law-fact questions are unsettled.[7] Please read the cited article by Professor Gard for a thorough discussion of the unsettled standards in *Franks v. Delaware* law and some proposed approaches to improving *Franks* standards.

The legal standards for reckless disregard for the truth are not settled, and reckless omissions are particularly unsettled. This case presents an excellent opportunity to clarify *Franks* "reckless disregard for the truth," particularly in regard to reckless omissions.

One of the best rulings on *Franks* reckless omissions came from Judge Richard S. Arnold, "[a]ny reasonable person would have known that this was the kind of thing the judge would wish to know." *United States v. Jacobs*, 986 F.2d 1231, 1235 (8th Cir. 1993).

In addition to restoring Judge Arnold's respect to all litigants in Middle America. This Court should also adopt his standard for *Franks* reckless omissions.

Reason 2

The judges in Middle America's suspicion/probable cause materiality analyses conflict with *United States v. Arvizu*, 534 U.S. 266 (2002), *Illinois v. Gates*, 462 U.S. 213 (1983) "totality of the circumstances."

A useful way to think about determining probable

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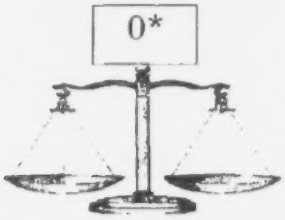
7. Stephen W. Gard, *Bearing False Witness: Perjured Affidavits and the Fourth Amendment*, 41 SUFFOLK U. L. REV. 445, 446 (2008)

cause at summary judgment on a 42 U.S.C. §1983 case is to get out the balance and the scale of the quanta of the evidence.

The Balance



*--Display with range of 0-100, reads zero at equilibrium.

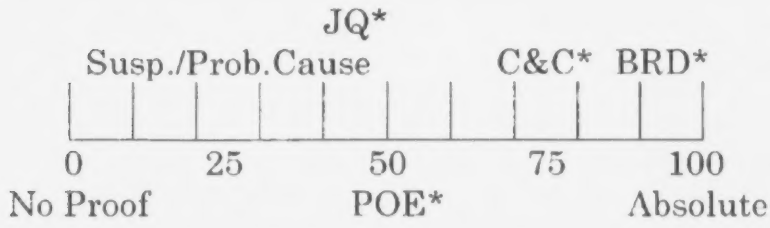
Explaining the Balance

The balance can be useful in deciding a legal controversy like the existence or non-existence of probable cause if you understand that evidence that supports particularized suspicion would be placed on one side of the balance, and evidence that supports particularized exoneration, would be placed on the other side of the balance.

If all evidence is put on the balance, the balance would display a number in the range 0-100.

Next, think of a scale that represents the quanta of the evidence. The range of the scale is 0 through 100 and familiar evidentiary standards are assigned their established or approximate location on the scale.

The Scale of the Quanta of Evidence



JQ Jury Question, same as, Genuine Issue of Fact, or Arguable POE.

POE Preponderance of the Evidence: 50 or 50+1.

C&C Clear and Convincing Evidence.

BRD Beyond a Reasonable Doubt.

If we assume, for the sake of this analysis, that various degrees of suspicion occupy a range of 10 #- 39 # and that Probable Cause starts at 40 #, we then have to decide how to use the balance to figure out whether the Rule 56 "totality of the circumstances" adds up to probable cause or a lesser degree of suspicion.

If the balance, at equilibrium, displays Zero, 0, and Rule 56 "facts" that make particularized *suspicion* more likely are placed on the side of the balance that adds to the number, that Rule 56 "fact", placed on the balance, raises the number in direct proportion to its "weight".

Conversely, Rule 56 "facts" that make particularized *exoneration* more likely are placed on the side of the balance that subtracts from the number, that Rule 56 "fact", placed on the balance, lowers the number in

direct proportion to its "weight".

Suspicion	Suspicion
More Likely	Less Likely
Rule 56 "facts"	Rule 56 "facts"

The error that the judges in Middle America make is that they deemed specific facts that weighed in support of particularized exoneration *immaterial*. That conflicts with "Totality of the circumstances" stated in *United States v. Arvizu*, 534 U.S. 266 (2002), which made clear that a "divide-and-conquer" disaggregation of facts violates constitutional norms for "totality of the circumstances" analysis.

The judges in Middle America made one-by-one declarations of immateriality, saying certain facts that supported particularized exoneration or diminished particularized suspicion did not matter enough to be material. That is the wrong approach.

You have to put all of the more likely Rule 56 "facts" on one side of the balance and all of the less likely Rule 56 "facts" on the other side of the balance. You can not know if the exonerating facts were "clearly critical" to the probable cause determination until you get the final number and see if you have probable cause or not.

Again, let us say that 40 # is the number for probable cause. If Lanpher knows three 20 # suspicion enhancing facts and that is all that he knows, then he has 60 # and probable cause.

However, let us say that Lanpher also knows 10 other 3 # facts that each support particularized exoneration. Each 3 # exonerating fact is lower in magnitude than each 20 # fact, but if you add up all 10 then you have 30 # worth of exonerating facts and when that is on the balance the display reads 30 # and you do not have probable cause, you have some degree of suspicion. Each 3 # fact mattered and was therefore clearly critical to the probable cause determination, because the final number did not add up to probable cause.

This Court should hear this case because the judges in Middle America need help understanding the complexities attending a 42 U.S.C. §1983 probable cause determination at Rule 56 summary judgment.

Reason 3

> The judges in Middle America deemed evidence of factors that erode the reliability and weight of an eyewitness identification to be immaterial to suspicion/probable cause and that conflicts with *Neil v. Biggers* 409 U.S. 188 (1972), *United States v. Arvizu,* 534 U.S. 266 (2002), *Illinois v. Gates,* 462 U.S. 213 (1983), and the analogous Eighth Circuit Model Criminal Jury Instruction §4.08. Eyewitness Testimony, which is a *Telfaire* instruction.

The Family explains this throughout this Petition and its Appendix, particularly at pp. 13-15, 25-29; and App. 42a-43a, 166a-200a.

Reason 4

The Rule 56 Analyses from Middle America

are *Merely Unconstitutional*, Not Merely Wrong. Middle America Needs New Rule 56 Light Bulbs.

The Family explains this throughout this Petition and its Appendix, but if the Reader attempts a Rule 56 review of this case's record, you will see what the Family means.

Reason 5

The judges in Middle America denied the benefit of reasonable inferences, especially, regarding Lanpher's failure to return to the hospital after the Search Warrant Execution.

The Family explains this inference in this Petition at pp. 12-13. Please *see also,* App. 80a, and Appellants' Reply Brief, pp. 18-23.

Lanpher and Schweitzer never answered this reasonable inference in their Reply when the Family argued it at the district court. Should not a Rule 56 moving party have to answer the non-moving parties' argued reasonable inferences with facts. Especially when the Local rule allows an automatic movant Reply, and Lanpher and Schweitzer made Reply. App. 38a-39a; App. 83a-92a.

Reason 6

The judges in Middle America ruled that Lanpher's hearsay business records are unimpeachable by Lanpher's deposition testimony and the other evidence Lanpher created and that conflicts with *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U. S. 133 (2000)

Please *see* pp. 22-25 above. Please *see also,*

Appellants' Reply Brief, pp. 11-23.

Reason 7

In *Hudson v. Michigan*, 547 U.S. 586 (2006), this Court held that the 42 U.S.C. §1983 civil case and increasing police professionalism are *available* and *effective* deterrents to police Fourth Amendment violations. The Justices on both sides of the *Hudson v. Michigan* decision should want to hear this case because an innocent Family needs not the exclusionary rule and officers that jump to conclusions and take artful shortcuts from police departments that look away and fail to take a professional approach do not deserve favored status in the federal courthouse that the Family helped to build.

Conclusion

The Family Respectfully Requests this Court Grant this Petition for Writ of Certiorari.

Respectfully Submitted,

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Counsel to Petitioners

563 F.3d 399

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-2040

Terrance Morris;	*	
Ricardo Morris;	*	
Rosalind Morris,	*	
	*	
Plaintiffs-Appellants,	*	Appeal from the
	*	United States
	*	District Court for
	*	the Western District
v.	*	of Missouri
	*	
Jarrett Lanpher;	*	
Robert Schweitzer,	*	
	*	
Defendants-Appellees.	*	

Submitted: December 11, 2008
Filed: April 24, 2009

Paul Matthew Tancredi, Kansas City, Missouri, argued, for appellant.

Diane Peters, Asst. Atty. Gen., Jefferson City, Missouri, argued (Jeremiah W. (Jay) Nixon, Atty. Gen., on the brief), for appellee.

Before LOKEN, Chief Judge, BEAM, Circuit Judge, and KYLE,* District Judge.

LOKEN, Chief Judge.

At 11 p.m. on July 28, 2003, Richard Schiele was shot in his Kansas City home by two assailants. Schiele identified Ricardo Morris as one of the assailants to Police Officer Jarrett Lanpher. Based on this identification, and some corroboration by other witnesses, Lanpher obtained a warrant to search the nearby home where brothers Terrance and Ricardo Morris lived with their mother, Rosalind. The warrant search yielded no evidence, and the brothers were absolved of any role in the shooting. Another officer kicked Terrance in the face while executing the warrant.

Rosalind and her sons filed this § 1983 complaint against the Kansas City Board of Police Commissioners and five police officers. The district court[1] granted summary judgment dismissing the Fourth Amendment claim against Lanpher and his supervisor, Sergeant Robert Schweitzer. Morris v. Lanpher, 2007 WL 869498, at *5 (W.D. Mo. Mar. 20, 2007). One year later, a jury found in favor of the

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* The HONORABLE RICHARD H. KYLE, United States District Judge for the District of Minnesota, sitting by designation.

[1] The HONORABLE FERNANDO J. GAITAN, JR., Chief Judge of the United States District for the Western District of Missouri.

other officer on the excessive force claims. The Morrises appeal only the dismissal of the Fourth Amendment claim. They contend that the affidavit Lanpher submitted in obtaining the search warrant contained deliberate falsehoods and recklessly disregarded the truth. Reviewing the grant of summary judgment *de novo*, we affirm.

I.

After the shooting, Schiele did not identify his assailants before being taken to a hospital. Lanpher interviewed Schiele at the hospital the next evening. Schiele said he lived with a man named Jason, who was helping him remodel houses. Schiele described the assailants as "two black males." Lanpher's interview report then states:

> The victim was asked if he knew anyone who would have done this he immediately thought that Jason had something to do with the attack and that the two dudes he hangs with w[]ere the one[]s who did the actual at-tack. He stated he knew the two dudes went by "Dink" and "Mont." He stated he did not know them personally but knew Jason went to their house all the time around the corner. The victim was asked if he would be able to identify the subjects who attacked him and he stated, "Yes."

Ricardo and Terrance Morris have been known since birth as "Dink" and "Mont."

Some three hours later, Lanpher interviewed Schiele's roommate, Jason Lancaster, then in custody on other charges. Lancaster denied any part in

the shooting and said he visited Schiele in the hospital earlier that day. Schiele told Lancaster "two black dudes shot him, one of them was stocky and the other a short dude." Schiele said "it might have been the two dudes who live in the 2nd house on the north side of 62nd Street," who Lancaster knew only as "Dink" and "Mont." Lancaster said he went to their house before visiting Schiele that day, as neighbors had reported, but no one was home. Lanpher's interview report states:

> Lancaster was then shown a photo Line-up consisting of six black males all similar in appearance, which included a photograph of Ricardo Morris . . . in the number six position. Morris resides at 1318 E. 62nd Street, which was identified by neighbors as the residence that Lancaster had visited on his ATV earlier in the day. Lancaster identified Morris as the subject he knew as "Dink."

The next morning, Lanpher visited Schiele at the hospital and showed him the same six-photo line-up. Lanpher's report states, "The victim viewed the line-up and identified Morris as one of the suspect[]s who shot him."

That afternoon, Lanpher prepared an affidavit applying for a warrant to search 1318 E. 62nd Street for "Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights." After reciting the victim's description of the shooting, and what neighbors reported hearing and seeing at the time, the affidavit recited:

> Neighbors identified 1318 E. 62nd Street as the house that the victim's friend hung out with. A computer check was conducted and a photo line-up was shown to the victim, which included a resident of 1318 E. 62nd Street. The victim identified this subject as the one he wrestled with and shot him. The subject who lives with the victim also identified the subject.

A Jackson County judge issued the warrant. Lanpher was present when a Tactical Entry Team executed the warrant. Nothing was seized.

II.

Qualified immunity protects public officials from damage actions if their conduct did not violate clearly established rights of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). A police officer in applying for a search warrant is entitled to qualified immunity from a § 1983 Fourth Amendment damage claim if his conduct was objectively reasonable. "Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable . . . will the shield of immunity be lost." Malley v. Briggs, 475 U.S. 335, 344-45 (1986). Officer Lanpher satisfies that standard in this case. His affidavit recited that he heard Schiele identify "Dink" and "Mont" as possible assailants, gathered evidence identifying Dink and Mont and linking them to Lancaster and to 1318 E. 62nd Street, and saw both Schiele and Lancaster identify Ricardo Morris as "Dink," one of the assailants, from a photo line-up. The affidavit clearly was not "lack-

ing in indicia of probable cause." See Tangwall v. Stuckey, 135 F.3d 510, 519 (7th Cir. 1998).

The Morrises argue that Lanpher is not entitled to qualified immunity for a different reason -- because his warrant application "deliberately omitted material and exculpatory information and included falsehoods." The principle is sound. "A warrant based upon an affidavit containing 'deliberate falsehood' or 'reckless disregard for the truth' violates the Fourth Amendment" and subjects the police officer to § 1983 liability. Bagby v. Brondhaver, 98 F.3d 1096, 1098 (8th Cir. 1996), quoting Franks v. Delaware, 438 U.S. 154, 171 (1978). Truthful in this context means that the information put forth is "believed or appropriately accepted by the affiant as true." Franks, 438 U.S. at 165.

The district court rejected this contention based upon its review of the extensive summary judgment record. After summarizing the many omissions and falsehoods asserted by the Morrises, the court explained:

> The Court finds, however, that most of the alleged omissions and falsehoods . . . are either immaterial, not supported by the record, or merely conclusions or attorney argument. Whatever the victim's level of knowledge regarding the Morris family, the victim identified the suspects as "Dink" and "Mont" -- the undisputed nicknames of Plaintiffs Ricardo and Terrance Morris. The materials found in the victim's home do not automatically cast doubt as to the victim's identification of suspects.

> Plaintiffs' claims that Defendant Lanpher made false claims regarding what neighbors told him are merely conclusions that are unsupported by any facts in the record. . . . Furthermore, the omissions of the victim's roommate's activities and statements are largely immaterial in that the roommate was also a suspect in the shooting, and the roommate's statements do not prevent suspicion of the Morris brothers, given the victim's identification of them. 2007 WL 869498, at *5.

After careful review of the record, we agree with the district court's analysis. The Morrises bore "the burden of proving the intentional or reckless inclusion of false statements in a warrant affidavit." United States v. Ozar, 50 F.3d 1440, 1443 (8th Cir. 1995). When Lanpher made a properly supported motion for summary judgment on the ground of qualified immunity, they "may not respond simply with general attacks upon the defendant's credibility, but rather must identify affirmative evidence from which a jury could find that the plaintiff has carried his or her burden of proving the pertinent motive." Crawford-El v. Britton, 523 U.S. 574, 600 (1998). The Morrises presented no evidence Lanpher had a personal stake in the matter that might cause him to act other than as an impartial criminal investigator. Compare Moody v. St. Charles County, 23 F.3d 1410 (8th Cir. 1994). They offered no specific, nonconclusory evidence that Lanpher believed his affidavit was false, or recklessly misconstrued Schiele's identification. Significantly, they presented no affidavit or deposition testimony by victim Schiele

or by roommate Lancaster contradicting their photo lineup identifications. Compare Hunter v. Namanny, 219 F.3d 825 (8th Cir. 2000). Indeed, that the recitals in the warrant affidavit aligned closely with Lanpher's contemporaneous interview reports is strong evidence that Lanpher believed that Schiele had identified one of his attackers, or at least accepted the identification as true for purposes of further investigation. While we construe disputed facts in the non-moving parties' favor, we may not infer bad motive absent even a scintilla of material fact supporting that inference.

For these reasons, we conclude that the Morrises failed to submit probative evidence that Lanpher's warrant affidavit contained deliberate falsehoods or a reckless disregard of the truth, and that an affidavit "supplemented by the omitted information, would not have been sufficient to support a finding of probable cause." Riehm v. Engelking, 538 F.3d 952, 966 (8th Cir. 2008); see Bagby, 98 F.3d at 1099 ("qualified immunity is appropriate if defendant has been accused of submitting a recklessly false affidavit and if a corrected affidavit would still provide probable cause to arrest or search"). Accordingly, summary judgment was proper.

Without an underlying constitutional violation by Lanpher, the Morrises' § 1983 claim against Schweitzer for failure to supervise necessarily fails. See Brockinton v. City of Sherwood, 503 F.3d 667, 673 (8th Cir. 2007).

The judgment of the district court is affirmed.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

ORDER

Pending before the Court is Defendants' motion for summary judgment and suggestions in support (Doc. No. 52).

I. Background

Plaintiffs are Terrance Morris, Ricardo Morris and Rosalind Morris[1], a family who at the time of the incidents described in Plaintiffs' complaint resided in a home at 1318 East 62nd Street, Kansas City, Missouri. On July 28, 2003, two assailants shot a resident of a home at 6206 Paseo, Kansas City, Missouri, near Plaintiffs' residence. On July 30, 2003, Defendant Jarrett Lanpher, obtained a search warrant for Plaintiffs' home in connection with the July 28, 2003, shooting. On July 30, 2003, after the warrant was issued, a Tactical Entry Team was assembled to execute the warrant. This team included Defendant Mark Hockemeier, Defendant Anthony Hernandez, and Defendant Ryan Bronner. Ten seconds after Defendants knocked on the door and received no reply,

[1] Rosalind Morris is the mother of Terrance and Ricardo.

the door was knocked in, and Plaintiff Terrance Morris was told to get down on the ground. In the process of the execution of the search warrant, Plaintiff Terrance Morris was kicked in the face by Defendant Hockemeier. Following the execution of the search warrant, no charges were brought against any of the Plaintiffs in relation to the July 28, 2003, shooting.

Plaintiffs bring seven counts in their complaint: Count I against Defendant Lanpher for Illegal Affidavit/Application for Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983; Count II against Defendant Schweitzer for Failure to Supervise Defendant Lanpher and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983; Count III against Defendants Hockemeier, Hernandez, and Bronner for Illegal Execution of Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983; Count IV against Defendant Hockemeier for Illegal Excessive Force and Resulting Deprivation of Right, Cognizable Under 42 U.S.C. § 1983[2]; Count V against Defendant Hockemeier for Battery[3]; Count VI against Defen-

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[2] In Plaintiffs' complaint, Plaintiffs characterize this claim as one of all Plaintiffs against Defendant Hockemeier. However, it is clear from the pleadings and the evidence presented on summary judgment that only one of the plaintiffs has a claim against Defendant Hockemeier for these allegations: Plaintiff Terrance Morris, who was allegedly kicked in the mouth and/or face during the execution of the search warrant.

[3] Again, although the complaint alleges that all Plaintiffs have a claim against Hockemeier for battery, only Plaintiff Terrance Morris actually states a claim.

dant Board for Unconstitutional Municipal Customs, Policies, Practices, and Usages and Resulting Deprivation of Right, Cognizable Under 42 U.S.C. § 1983; and Count VII against Defendant Board for Inadequate Training and Inadequate Supervision of KCPD Officers and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983.

II. Facts

Plaintiffs Terrance, Ricardo and Rosalind Morris are residents of Kansas City, Missouri, and at all times relevant to this lawsuit resided at 1318 East 62nd Street.[4] "Dink" and "Mont" are the lifelong nicknames of Ricardo and Terrance Morris, respectively. Defendants Detective Lanpher, Sergeant Schweitzer, Sergeant Hockemeier, Police Officer Hernandez and Police Officer Bronner are employees of the Kansas City, Missouri, Board of Police Commissioners.

On July 28, 2003, police officers from the Kansas City Missouri Police Department were dispatched to 6206 Paseo in regards to the report of a shooting. When officers located the shooting victim, the victim stated that two black males confronted him in his

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[4] Plaintiffs include additional facts relating to themselves; however, the Court finds these facts are not material to the issues presented in this motion. For instance, Plaintiffs state that (1) they have a "reputation in the community as responsible, law abiding, and gainfully employed citizens," citing only their own testimony (see ¶ 30 of Doc. No. 64); and (2) they have never had any involvement with serious criminal activity (see id., ¶ 31).

kitchen and these men shot at the victim several times, wounding him.

Detective Lanpher investigated the shooting at 6206 Paseo.[5] On July 29, 2003, Detective Lanpher interviewed the victim at Research Medical Center.[6] According to the written interview summary of Detective Lanpher, the victim recalled the attack by

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[5] Plaintiffs include several additional facts regarding the search of the victim's residence made on July 29, 2003, including information that at the victim's house were found guns, ammunition, scales, white residue, green leafy substance, a hot tub room, an in-wall aquarium, a Jacuzzi tub, and an air-conditioning unit with severed wires and pipes. See Doc. No. 64, ¶¶ 35-39. The Court finds that the contents of the shooting victim's residence are of only marginal relevance to the issues presented in Defendants' motion. Plaintiffs further note that the investigation had also focused on the victim's roommate, Jason Lancaster (a white male), and that Lancaster led police on a high speed pursuit through several neighborhoods in Kansas City on July 29, 2003. See Doc. No. 64, ¶¶41-45. Again, however, this is of only marginal relevance, as Defendants admit that the victim told Detective Lanpher that he believed his roommate was involved but that other individuals did the actual shooting.

[6] In Plaintiffs' statement of facts, Plaintiffs argue that the interview occurred less than 24 hours after the victim "sustained the gunshot wounds, underwent emergency surgery and received anesthesia for the same; had very likely received significant amounts of medication for the alleviation of pain; and was also likely suffering from the mind-altering effects of recent and long term abuse of illegal drugs." As noted by Defendants, however, there is no evidence in the record that the victim underwent emergency surgery, received anesthesia, received significant amounts of pain medication, or was "suffering from the mind-altering effects of recent and long term abuse of illegal drugs." Plaintiffs' argument, therefore, will be disregarded.

first describing "two black males" as the assailants, and also described his efforts to summon help by making noise and calling out after he had retreated to the basement of the house, and that, at one point, one attacker came to a broken basement window and threatened to try harder to kill the victim, but only if he continued to make loud noise. Additionally, during that interview, the victim was asked if he knew of anyone who would have done this to him and indicated that he believed his roommate was somehow involved but that two individuals who associated with his roommate were the ones who did the actual shooting. Exhibit 3 to Doc. No. 52, Investigative Report dated July 30, 2003.[7] The victim told Detective Lanpher that the he only knew the individuals who

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[7] Plaintiffs argue that the detective's unsworn attributions to the shooting victim are in some unspecified way not in compliance with Rule 56 of the Federal Rules of Civil Procedure. However, as noted by Defendants in their reply, Detective Lanpher's report is a business record admissible pursuant to Rule 803(8) of the Federal Rules of Evidence, and further noting that the parties have stipulated to the authenticity of this exhibit. Doc. No. 58, ¶ 24. Furthermore, although Plaintiffs attempt to argue that Detective Lanpher made false representations in order to obtain the search warrant, the Court agrees with Defendants that the assertions made by Plaintiffs in this regard are speculation and argument that are not supported by the evidence. In particular, the actual content of the deposition transcripts cited by Plaintiffs do not provide support for Plaintiffs' assertions at all, and appear to be Plaintiffs' argumentative interpretation of Detective Lanpher's answers to Plaintiffs' counsel's oftentimes improper questions. To the extent that Plaintiffs' "facts" are in actuality argument, the Court will disregard the same in the remainder of its recitation of the facts.

shot him as "Dink" and "Mont," but he would be able to identify the individuals who attacked him. Id.

After confirming the identities of "Dink" and "Mont" as Terrance and Ricardo Morris,

Detective Lanpher returned to the Research Medical Center and presented the victim with a photograph lineup consisting of six black males all similar in appearance. One of the pictures was of Ricardo Morris.[8] Id. The victim identified Ricardo Morris as one of the persons who shot him. Id. Based on the information received from the investigation, Detective Lanpher submitted an application for a warrant to search the residence of Terrance and Ricardo Morris.[9] Exhibit 1 to Doc. No. 52. On July 30, 2003, a

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[8] Plaintiffs state that it is undisputed that Defendant Lanpher presented a photograph lineup; however, Plaintiffs dispute that the photographic lineup referenced was proper because it was the same photographic lineup presented to the shooting victim's roommate Jason Lancaster the night before, as evidenced by the fact that his initials are on the back of the lineup. See Ex. 28 to Doc. No. 64. Plaintiffs then go on to state (without evidentiary support) that Lancaster's initials appear on the back of the lineup "to bolster the likelihood of the shooting victim making the same identification." See Doc. No. 64, p. 5, ¶ 9. This Court agrees with Defendant that Plaintiffs' suggestion that the photographic lineup was improper is speculation; none of the evidence presented suggests that the photographic lineup was improper or that the shooting victim was shown the back of the lineup prior to the selection of the photograph of Ricardo Morris.

[9] Plaintiffs identify additional facts they believe were relevant toward the warrant application: (1) the victim stated that his roommate, Lancaster, "hung with some dudes around the corner on East 62nd in a red brick house," and the Morris home is neither red nor brick; (2) the victim stated he did not know

judge for the Circuit Court of Jackson County, Missouri, signed a search warrant for the Morris home to search and seize "Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights."[10] Exhibit 2 to Doc. No. 52.

On July 30, 2003, officers of the Tactical Entry Team (also known as the 630 Squad) for the Kansas City Missouri Police Department executed the search warrant on the Morris residence. Defendants Hernandez, Bronner and Hockemeier were all members of that Tactical Entry Team that executed the warrant on the Morris residence. Prior to executing the warrant, the members of the Tactical Entry

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anything about assault rifles being in his home; (3) Detective Lanpher purportedly did a computer check of Terrance and Ricardo, and that check would have made it plainly obvious that neither have a history of prior similar bad acts; and (4) Detective Lanpher interviewed Lancaster on July 29, 2003, and Lancaster told him that (a) someone named Fuzzy was having problems with the victim, (b) Lancaster had visited the victim at the hospital earlier on July 29, 2003, and (c) the victim described his assailants to Lancaster as "one of them stocky and the other a short dude," whereas Detective Lanpher had information in his case file that both Terrance and Ricardo were over six feet tall and less than 170 pounds. See Doc. No. 64, ¶¶ 48-57. However, as noted by Defendants, there is no evidence that the shooting victim told Lanpher that the attackers lived at a red brick house, nor is there any evidence that Lanpher did a computer check of Terrance and Ricardo. Further, the victim's statement regarding the assault rifles is of little relevance to the making of the warrant application, and the statements of Lancaster (another suspect in the shooting) did not preclude a finding of probable cause as to Terrance and Ricardo.

[10] Plaintiffs note that no such evidence was found. See July 30, 2003, Search Warrant and Return, Ex. 19 to Doc. No. 64.

Team were briefed by Detective Lanpher regarding the investigation and reviewed the warrant to make sure the information on the warrant was accurate. After approaching the residence, Officer Hernandez knocked on the Morris's front door and announced "Police Officers, Search Warrant" and then in a loud voice counted out loud ten seconds. No one responded to the door before the conclusion of the ten second count. After ten seconds, Police Officer Bronner used a battering ram to breach the Morris' front door. Upon entering the home, the Tactical Entry Team encountered Terrance Morris in the kitchen area. Police Officer Hernandez instructed Terrance Morris to show the officers his hands and to get down on the ground. Officer Hernandez testified that Terrance Morris did not comply with his instructions and Police Officer Hernandez forced Terrance Morris onto the floor. Hernandez Depo., 13:4-12, Ex. 5 to Doc. No. 52.[11]

At some point in time during the search of the residence, Defendant Hockemeier encountered Plaintiff Terrance Morris and kicked him in the mouth. Defendant Hockemeier indicates that Terrance Morris disobeyed verbal directives given to him, and Hockemeier kicked him in order to secure Terrance Morris's compliance with verbal com-

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[11] Plaintiffs attempt to dispute that Terrance Morris did not comply with Police Officer Hernandez's instructions; however, in their attempt to do so, Plaintiffs simply argue that they "had no involvement with the crime being investigated." which is not relevant as to whether Terrance Morris complied with instructions. Plaintiffs do not dispute that Officer Hernandez forced Terrance Morris onto the ground.

mands. Plaintiff Terrance Morris disputes that he disobeyed the officer's directives, and disputes Defendant Hockemeier's rationale for the kick in the mouth. Terrance Morris suffered cuts to his mouth, including one cut on the inside of his lip and another on the outside of his mouth, near his chin. Defendants assert that Terrance Morris refused medical treatment at the scene. Depo. of Terrance Morris, 30:24 - 31:4, Ex. 6 to Doc. No. 52 ("Q: After you were on the couch, what happened next? A: They wanted me to get medical attention, but I told them no. I resisted. I didn't want to go. I wanted to know what was going on.") Plaintiffs, however, dispute that Terrance Morris refused medical treatment at the scene, noting that the injury to his mouth was treated by paramedics that were called to the scene. See id., 31:12-32:3.[12]

Ms. Morris, Terrance, and Ricardo reported the incident to the Defendant Board by filing a complaint with its Office of Citizen Complaints (hereinafter, "OCC") in the days immediately following the execution of the search warrant. Rosalind Morris testified at her deposition that she desired the investigation evaluate how the warrant could be issued as

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[12] Defendants further assert that Terrance Morris never received any additional medical treatment for his wound, citing "Exhibit 7, Sworn Statement of Terrance Morris of August 26, 2003, at pg. 4." Notably, Exhibit 7 is not attached to Defendants' motion. Further, Plaintiffs dispute this fact, noting that Plaintiff Terrance Morris received medical treatment at Research Medical Center on one occasion after the incident. See Terrance Morris Deposition, Ex. to Doc. No. 64, 53:22 - 55:25; Terrance Morris's Medical Records, Ex. 1 to Doc. No. 64.

to her home, in addition to evaluating the claim of excessive force. Doc. No. 64, Rosalind Morris Deposition, 79:1-80:25. The OCC directed the KCPD Internal Affairs unit to investigate the use of force by Defendant Hockemeier.[13] See Doc. No. 64, Ex. 42 I. The official finding in regards to Officer Hockemeier's use of force was that the complaint was unsubstantiated because, "It is unknown if the force used on Mr. Morris was reasonable given the circumstances. Without videotape of the incident or other officers or citizens who witnessed the kick, it cannot be determined if that action was appropriate given the nature of the incident."[14] Id.

The investigation as to who shot the victim was officially inactivated in October of 2003 after the vic-

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[13] Plaintiffs assert that the OCC "ignored all other aspects of the complaint." See Doc. No. 64, ¶ 85. However, there is no evidence before the Court as to the actual contents of Plaintiffs' complaint; the only evidence is what Plaintiff Rosalind Morris believed the OCC and KCPD Internal Affairs unit would investigate.

[14] Plaintiffs argue that the complaint "was not investigated to a reasonable standard of care." See Doc. No. 64, Declaration of D. P. Van Blaricom. However, this is not a fact, but instead is a conclusion of law that will not be considered on summary judgment. Plaintiffs further state, "None of the investigators was able to figure out that a police officer should not use a steel-toed boot to attempt a brachial stun, and the lack of knowledge regarding precautions during the use of nerve receptor techniques is widespread and pervasive in the Kansas City, Missouri, Police Department." However, as noted by Defendants, there is no evidence to support Plaintiffs' argument that the use of steel toed shoes to effectuate a nerve receptor technique is either widespread or pervasive.

tim refused to cooperate with police.[15] See Doc. No. 64, Ex. 13.

III. Summary Judgment Standard

Summary judgment is appropriate if the movant demonstrates that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986). The facts and inferences are viewed in the light most favorable to the nonmoving party. Fed. R. Civ. P. 56(c); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-590 (1986). The moving party must carry the burden of establishing both the absence of a genuine issue of material fact and that such party is entitled to judgment as a matter of law. Matsushita, 475 U.S. at 586-90.

Once the moving party has met this burden, the nonmoving party may not rest on the allegations in the pleadings, but by affidavit or other evidence, must set forth facts showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e); Lower Brule Sioux Tribe v. South Dakota, 104 F.3d 1017, 1021 (8th Cir. 1997). To determine whether the disputed facts are material, courts analyze the evidence in the context of the legal issues involved. Lower Brule, 104 F.3d at 1021. Thus, the mere existence of

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[15] Plaintiffs further claim that Defendant Lanpher never went back to the hospital to tell the victim that the persons he identified as attacking him "were instantly cleared of suspicion." See Doc. No. 64, ¶ 90. However, even assuming this is true, Plaintiffs do not demonstrate that Detective Lanpher's alleged failure in this regard constitutes a breach of any duty he owed the Plaintiffs.

factual disputes between the parties is insufficient to avoid summary judgment. Id. Rather, "the disputes must be outcome determinative under prevailing law." Id. (citations omitted).

Furthermore, to establish that a factual dispute is genuine and sufficient to warrant trial, the party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the facts." Matsushita, 475 U.S. at 586. Demanding more than a metaphysical doubt respects the appropriate role of the summary judgment procedure: "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action." Celotex, 477 U.S. at 327.

IV. Analysis

A. Count I: Plaintiffs' Allegations Against Defendant Lanpher for Illegal Affidavit/ Application for Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

Defendant Lanpher argues that qualified immunity prevents Plaintiffs' case against him from proceeding to trial. Plaintiffs must demonstrate the following in order for their claims to survive a qualified immunity inquiry: (1) the defendant violated their Constitutional or statutory rights; (2) the right(s) were clearly established at the time of the defendant's alleged conduct; and (3) when viewing the facts in the light most favorable to the plaintiffs, there are genuine issues of material fact as to

whether "a reasonable official would have known that the alleged action indeed violated that right." Hunter v. Namanny, 219 F.3d 825, 829 (8th Cir. 2000). Here, Defendants challenge the first element mentioned above.

With respect to a violation of Plaintiffs' constitutional rights, Plaintiffs allege that Defendant Lanpher illegally obtained a search warrant to their home, in violation of their Fourth Amendment rights. Fourth Amendment protections require that a warrant be based on a truthful showing of facts sufficient to establish probable cause. Franks v. Delaware, 438 U.S. 154, 164-165 (1978). "Truthful" means only "that the information put forth is believed or appropriately accepted by the affiant as true." Id.

Here, Plaintiffs argue that Defendant Lanpher deliberately omitted material and exculpatory information and included falsehoods the warrant affidavit/application to search the Plaintiffs' home. See Doc. No. 64, pp. 24-26. (At Doc. No. 64, pp. 24-26, Plaintiffs argue that the following information was omitted: (1) the victim "admitted" he did not know any of the Morris family other than hearing the two nicknames; (2) the victim claimed the shooters "lived in" a red brick house; (3) the victim's house contained firearms and evidence of drug dealing; (4) the victim's roommate fled from police the day after the shooting; (5) the victim's roommate told police that victim had a rival named "Fuzzy"; (6) Defendant Lanpher wrongly relied on a neighbor, who claimed the victim and the Plaintiff brothers were "great friends and business associates"; (7) Defendant Lanpher's files indicate [based on the roommate's state-

ment] that one of the shooters was short and the other was stocky, however both Ricardo and Terrence are "over 6 feet tall and slight in build"; and (8) the photo line-up presented to the victim was premarked with identifications by others. Plaintiffs also allege that Defendant Lanpher's search warrant affidavit/application contained deliberate falsehoods, including (1) Defendant Lanpher's claim that the victim identified the shooters before Defendant Lanpher interviewed a "neighbor minutes after the shooting"; and (2) Defendant Lanpher's claim that neighbors indicated an association between the victim's roommate Jason Lancaster and the Plaintiffs Ricardo and Terrance Morris.)

The Court finds, however, that most of the alleged omissions and falsehoods discussed by Plaintiffs are either immaterial, not supported by the record, or merely conclusions or attorney argument. Whatever the victim's level of knowledge regarding the Morris family, the victim identified the suspects as "Dink" and "Mont"—the undisputed nicknames of Plaintiffs Ricardo and Terrance Morris. The materials found in the victim's home do not automatically cast doubt as to the victim's identification of suspects. Plaintiffs' claims that Defendant Lanpher made false claims regarding what neighbors told him are merely conclusions that are unsupported by any facts in the record. Furthermore, the victim did not claim that the two shooters lived in a red brick house, rather the evidence is that they hung out in a red brick house. Furthermore, the omissions of the victim's roommate's activities and statements are largely immaterial in that the roommate was also a suspect in the shooting, and the roommate's statements do not pre-

vent suspicion of the Morris brothers, given the victim's identification of them. Plaintiffs' allegation that the photo line-up was pre-marked does not demonstrate an omission or falsehood in that there is no evidence that the victim was given the opportunity to view the pre-marked identification on the back of the line-up prior to making his own identification.

The Court agrees with Defendant Lanpher that the facts presented in the application for search warrant sufficiently demonstrated probable cause. The shooting victim said that "Dink" and "Mont" were the shooters, and the shooting victim identified one of his shooters as Plaintiff Ricardo Morris in a photo line-up. The shooting victim said that he believed his roommate Jason Lancaster, "Dink," and "Mont" were involved in his shooting. "Dink" and "Mont" are the lifelong nicknames of Plaintiffs Ricardo and Terrance. The Plaintiffs do not dispute that the victim identified Plaintiffs Terrance and Ricardo Morris as his shooters by their nicknames. Nor do they dispute that the victim identified Plaintiff Ricardo by a photo line-up as one of his shooters. Summary judgment is appropriate if there is any reasonable basis to conclude that probable cause existed. Cross v. City of Des Moines, 965 F.2d 629, 632 (8th Cir. 1992). Furthermore, qualified immunity is only lost where the warrant application is so lacking an indicia of probable cause as to render official belief in its existence unreasonable. George v. City of St. Louis, 26 F.3d 55, 57 (8th Cir. 1994). This Court agrees with Defendants that there is no support for Plaintiffs' claim that an officer's reliance on the accounts of events and identification of suspects by the victim of

a crime (absent a reason to believe the victim was mistaken or lying) could ever be the basis for an unreasonable belief on the part of the officer that probable cause existed.

Accordingly, the Court finds that Defendants' motion for summary judgment as to Count I of Plaintiffs' complaint should be **GRANTED.**

B. Count II: Plaintiffs' Allegations Against Defendant Schweitzer for Failure to Supervise Defendant Lanpher and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

Plaintiffs claim that Defendant Schweitzer, as Defendant Lanpher's immediate supervisor, should be held liable for failure to appropriately supervise him in the making of the affidavit/application for the search warrant. However, as noted by Defendants, if the claim against Defendant Lanpher do not survive summary judgment, the claims against

Defendant Schweitzer fail as a matter of law. See Schulz v. Long, 44 F.3d 643, 650 (8th Cir. 1995).

Accordingly, as Plaintiffs' claims against Defendant Lanpher for improper application for a search warrant fail for the reasons stated above, Defendants' motion for summary judgment as to Count II of Plaintiffs' complaint is **GRANTED.**

C. Count III: Plaintiffs' Allegations Against Defendants Hockemeier, Hernandez, and Bronner for Illegal Execution of Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

In Count III, the Plaintiffs contend that Defendants Sergeant Hockemeier, Officer Hernandez, and

Officer Bronner violated their Fourth and Fourteenth Amendment rights by illegally executing a search warrant of their home. See Doc. No. 1, p. 26., ¶ 119. The Plaintiffs claim the search warrant execution was unreasonable because the officers only waited ten seconds, after announcing themselves, before breaking in the front door. Doc. No. 1 at p. 26, ¶¶ 120-21.

The knock and announce rule generally requires police officers to "wait[] long enough after knocking to infer that they have been constructively denied admittance." U.S. v. Vesey, 338 F.3d 913, 915 (8th Cir. 2003). The reasonable delay required by the knock and announce rule before officers force entry is determined by the circumstances of each search. United States v. Lucht, 18 F.3d 541, 549 (8th Cir.1994).

Defendants point out that the Eighth Circuit has repeatedly held that ten seconds is a sufficient amount of time before forcing entry. U.S. v. Morris, 436 F.3d 1045, 1049 (8th Cir. 2006) (finding ten seconds sufficient where the home to be searched was modestly sized, the occupants were probably awake, and the risk of evidence destruction was high); Vesey, 338 F.3d at 916 (finding ten seconds sufficient before entering a small apartment to search for drugs). Plaintiffs do not dispute the Defendants' contention that Eighth Circuit case law suggests that a ten second delay, when investigating a violent crime, is sufficient under the knock and announce rule. Further, Plaintiffs "concede that summary judgment could be granted on Count III." Doc. No. 64, p. 28, ¶ 2.

Accordingly, as it is undisputed that Defendants waited ten seconds before entering and as Plaintiffs have conceded summary judgment is appropriate in this circumstance, Defendants' motion for summary judgment is **GRANTED** as to Count III of Plaintiffs' complaint.

D. Count IV: Plaintiff Terrance Morris's Allegations Against Defendant Hockemeier for Illegal Excessive Force and Resulting Deprivation of Right, Cognizable Under 42 U.S.C. § 1983

After considering Defendants' motion and suggestions in support (Doc. No. 52), Plaintiffs' suggestions in opposition (Doc. No. 64), and Defendants' reply (Doc. No. 65), the Court finds that genuine issues of fact remain as to Plaintiff Terrance Morris's claim against Defendant Hockemeier for excessive force. Therefore, Defendants' motion for summary judgment as to Count IV of Plaintiffs' complaint will be **DENIED.**

E. Count V: Plaintiff Terrance Morris's Allegations Against Defendant Hockemeier for Battery

Defendants state that Plaintiff Terrance Morris's claim against Defendant Hockemeier for battery is barred because (1) as discussed in relation to Count IV, Defendant Hockemeier's use of force was reasonable; (2) as a government official, Defendant Hockemeier is shielded by the doctrine of official immunity in that his acts toward Plaintiff were discretionary acts; and (3) as Defendant Hockemeier is a public employee, Plaintiff's claims are barred pursuant to the public duty rule.

With respect to whether the use of force was reasonable, the Court finds that genuine issues of fact remain, as discussed in relation to Count IV, above. Further, this Court finds that issues of fact remain as to whether Defendant Hockemeier acted in bad faith or malice toward Plaintiff Terrance Morris, preventing this Court from granting summary judgment based on the doctrine of official immunity. See Blue v. Harrah's North Kansas City, LLC, 170 S.W.3d 466, 479-80 (Mo. App. W.D. 2005) (finding that official immunity does not apply to discretionary acts done in bad faith or with malice). Finally, with respect to the public duty doctrine, which provides that a "public employee may not be held civilly liable for breach of a duty owed to the general public, as distinguished from a duty owed to a particular individual," Green v. Denison, 738, S.W.2d 861, 866 (Mo. banc 1987), Defendants do not identify with particularity the duty allegedly breached, preventing this Court from undertaking an analysis as to whether the duty was owed to the general public or to Plaintiff in particular.[16] Accordingly, Defendants' motion for summary judgment as to Count V of Plaintiffs' complaint is **DENIED.**

F. Count VI: Plaintiffs' Allegations Against Defendant Board for Unconstitutional Municipal Customs, Policies, Practices, and Usages and

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[16] Further, although Plaintiffs have not provided cases in support of this proposition, the Court finds persuasive for purposes of this motion only Plaintiffs' assertion that since duty is not an element of the intentional tort of battery, the public duty doctrine ought not apply in this situation.

Resulting Deprivation of Rights, Cognizable Under 42 U.S.C. § 1983

Defendants note that a plaintiff may only establish municipal liability under Section 1983 if the plaintiff demonstrates that his constitutional rights were violated by an "action pursuant to official municipal policy" or misconduct among non-policymaking employees so pervasive "as to constitute a 'custom or usage' with the force of law." Ware v. Jackson County, Mo., 150 F.3d 873, 880 (8th Cir. 1998)(quoting Monell v. Department of Soc. Serv., 436 U.S. 658, 691 (1978)). "Custom or usage" is demonstrated by (1) the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity's employees; (2) deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and (3) proof that the custom was the moving force behind the constitutional violation. Id.

As noted by Defendants, Plaintiffs have presented absolutely no evidence of an official municipal policy. Furthermore, giving full consideration of the arguments made in Plaintiffs' response (Doc. No. 64), Plaintiffs' have failed to demonstrate deliberate indifference by policy-making officials after notice to the officials of similar misconduct. There is simply no evidence in the record that the Board received notice of any relevant misconduct. Under these circumstances, the Defendant Board cannot be found liable. Defendants' motion for summary judgment as to Count VI of Plaintiffs' complaint is **GRANTED.**

G. Count VII: Plaintiffs' Allegations Against Defendant Board for Inadequate Training and Inadequate Supervision of KCPD Officers and Resulting Deprivation of Rights, Cognizable under 42 U.S.C. § 1983

As noted by Defendants, in order for the Board to be found liable for inadequate training or supervision, Plaintiffs must demonstrate: (1) the board received notice of a pattern of unconstitutional acts committed by the subordinate(s); (2) defendants demonstrated deliberate indifference to or tacit authorization of the offensive acts; (3) defendants failed to take sufficient remedial action to train or supervise the offending subordinate; and (4) such failure proximately caused injury to the plaintiffs. Owl v. Robertson, 79 F.Supp.2d 1104, 1114 (D. Neb. 2000); Otey v. Marshall, 121 F.3d 1150, 1155 (8th Cir. 1997).

Defendants state that Plaintiffs have provided no evidence of a pattern of unconstitutional acts, nor have Plaintiffs provided evidence that the Board knew of any unconstitutional acts (and, thus, the Board could not be deliberately indifferent to or tacitly authorize the same). In response, Plaintiffs simply argue that there must be a failure to train and supervise in regards to the use of force and nerve receptor techniques, given the allegations in Plaintiffs' complaint. However, Plaintiffs have completely failed to point to any evidence that the Board had any notice about a pattern of constitutional violations committed by subordinates. Under these circumstances, the Defendant Board cannot be found

liable. Defendants' motion for summary judgment as to Count VII of Plaintiffs' complaint is **GRANTED.**

V. Conclusion

Therefore, for all the foregoing reasons, Defendants' motion for summary judgment (Doc. No. 52) is **GRANTED IN PART** as it relates to the claims raised in Counts I, II, III, VI, and VII of Plaintiffs' complaint. Defendants' motion for summary judgment (Doc. No. 52) is **DENIED IN PART** as it relates to the claims raised in Counts IV and V of Plaintiffs' complaint.

The only claims remaining for trial are Plaintiff Terrance Morris's claims against Defendant Mark Hockemeier, as stated in Counts IV and V of Plaintiffs' complaint. Accordingly, as the claims remaining for trial have been limited substantially since the time the parties made their pre-trial filings, the Court finds that the parties should submit revised versions of these documents. Plaintiff's revised witness list, exhibit list, deposition designations, and proposed instructions are due on or before **Friday, March 23, 2007.** Defendant's revised witness list, exhibit list, objections to plaintiff's deposition designations, and proposed instructions are due on or before **Tuesday, March 27, 2007.**

IT IS SO ORDERED.

/s/ Fernando J. Gaitan, Jr.
Chief United States District Judge

Dated: 3/20/07
Kansas City, Missouri

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Terrance Morris, et al.,	)	
Plaintiffs-Appellants,	)	Case No.: 08-2040
	)	
vs.	)	
	)	
Jarrett Lanpher, et al.,	)	
Defendants-Appellees.	)	

Plaintiffs-Appellants'
Motion for Clarification

Plaintiffs-Appellants respectfully request the Panel to provide clarifying answers to the following questions:

1. Is the Panel holding that a reviewing magistrate; including, hypothetically, each of them, individually; would issue the warrant if the Appellants' Amended Corrected Affidavit/Application for Search Warrant were the one submitted?

2. Is the Panel holding that an objectively reasonable investigating detective would submit the Appellants' Amended Corrected Affidavit/Application for Search Warrant and expect a warrant to issue?

3. Does the Panel hold that the answers to Questions 1 and 2 are findings on matters of fact or matters of law?

Please reply promptly so that Plaintiffs-Appellants can timely file other posthearing motions by the due date of May 8, 2009. Thank You.

Dated: April 28, 2009 Respectfully submitted,

/s/ Paul Matthew Tancredi
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Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the United States Court of Appeals for the Eight Circuit and a copy of the Notice of Electronic Filing of the above document was transmitted via e-mail this 28th day of April, 2009, to:

Diane F. Peters
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 645102

/s/ Paul Matthew Tancredi
Attorney for Plaintiffs-Appellants

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No: 08-2040

Terrance Morris, et al.,

Appellants

v.

Jarrett Lanpher, In his official capacity as a Kansas City, Missouri Police Department Officer, and as an individual and Robert Schweitzer, In his official capacity as a Kansas City, Missouri Police Department Officer and as an individual

Appellees

Appeal from the United States District Court for the Western District of Missouri-Kansas City
(4:05-cv-00362-FJG)

ORDER

The motion for clarification and the motion for leave to attach search warrant affidavits to the petition for rehearing filed by appellants have been considered by the court and are denied.

May 06, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit
/s/ Michael E. Gans

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No: 08-2040

Terrance Morris, et al.,

Appellants

v.

Jarrett Lanpher, In his official capacity as a Kansas City, Missouri Police Department Officer, and as an individual and Robert Schweitzer, In his official capacity as a Kansas City, Missouri Police Department Officer and as an individual

Appellees

Appeal from the United States District Court for the Western District of Missouri-Kansas City
(4:05-cv-00362-FJG)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 08, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit
/s/ Michael E. Gans

Constitutional Provisions, Statutes & Rules

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The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend, IV.

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FED. R. CIV. P. 56 provides:

Rule 56. Summary Judgment

(a) BY A CLAIMING PARTY. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after:

(1) 20 days have passed from commencement of the action; or

(2) the opposing party serves a motion for summary judgment.

(b) BY A DEFENDING PARTY. A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) SERVING THE MOTION; PROCEEDINGS. The motion must be served at least 10 days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day. The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any

affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) CASE NOT FULLY ADJUDICATED ON THE MOTION.

(1) *Establishing Facts.* If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts — including items of damages or other relief — are not genuinely at issue. The facts so specified must be treated as established in the action.

(2) *Establishing Liability.* An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

(e) AFFIDAVITS; FURTHER TESTIMONY.

(1) *In General.* A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.

(2) *Opposing Party's Obligation to Respond.* When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own

pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) WHEN AFFIDAVITS ARE UNAVAILABLE. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) deny the motion;

(2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or

(3) issue any other just order.

(g) AFFIDAVITS SUBMITTED IN BAD FAITH. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

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United States District Court for the Western District of Missouri Local Rule 56.1 provides:

56.1 SUMMARY JUDGMENT MOTIONS

(a) The suggestions in support of a motion for summary judgment shall begin with a concise statement of uncontroverted material facts. Each fact shall be set forth in a separately numbered paragraph. Each fact shall be supported by reference to where in the record the fact is established. *See* Rule 56(e).

Suggestions in opposition to a motion for summary judgment shall begin with a section that contains a concise listing of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be set forth in a separate paragraph, shall refer specifically to those portions of the record upon which the opposing party relies, and, if applicable, shall state the paragraph number in movant's listing of facts that is disputed. All facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party.

All facts on which a motion or opposition is based shall be presented in accordance with Rule 56 of the Federal Rules of Civil Procedure. Affidavits or declarations shall be made on personal knowledge and by a person competent to testify to the facts stated. Where facts referred to are contained in another document, such as a deposition, interrogatory answer or admission, a copy of the relevant excerpt from the document shall be attached.

(b) Suggestions in Opposition to Summary Judgment. Within 30 days from the time the motion is filed, each party opposing the motion shall serve and file a brief written statement of the reasons in opposition to the motion.

(c) Reply Suggestions in Support of Summary Judgment. Within 15 days from the time the suggestions in opposition are filed, a reply brief may be filed.

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FED. R. CIV. P 49 provides:

Rule 49. **Special Verdict; General Verdict and Questions**

(a) SPECIAL VERDICT.

(1) *In General.* The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) *Instructions.* The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues Not Submitted.* A party waives the right to a jury trial on any issue of fact raised by

the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) GENERAL VERDICT WITH ANSWERS TO WRITTEN QUESTIONS.

(1) *In General.* The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) *Verdict and Answers Consistent.* When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) *Answers Inconsistent with the Verdict.* When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) *Answers Inconsistent with Each Other and the Verdict.* When the answers are inconsistent

with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(As amended Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

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42 U.S.C. §1983 (2008) provides:

Title 42 - The Public Health And Welfare
Chapter 21-Civil Rights Subchapter I-Generally

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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Eighth Circuit Model Criminal Jury Instructions
Final Instructions:
Consideration of Particular Kinds of Evidence

[To facilitate review of the Petition, this instruction is annotated to identify the *Biggers* and *Telfaire* factors first identified in the Petition, at p. 13-14.]

4.08. Eyewitness Testimony

The value of identification testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, ***Biggers*** **1.** whether the witness had an adequate opportunity to observe the person in question at the time of the offense. You may consider, in that regard, such matters as ***Telfaire*** **A.** the length of time the witness had to observe the person in question, ***Telfaire*** **B.** the prevailing conditions at that time in terms of visibility or distance and the like, and ***Telfaire*** **C.** whether the witness had known or observed the person at earlier times.

[***Telfaire*** **D.** In general, a witness uses his or her senses to make an identification. Usually the witness identifies an offender by the sense of sight -- but this is not necessarily so, and other senses may be used.]

Telfaire **E.** You should also consider whether the identification made by the witness after the offense was the product of [his] [her] own recollection. You

may consider, in that regard, ***Biggers*** **4.** the strength of the identification, and ***Telfaire*** **F.** the circumstances under which the identification was made, and ***Biggers*** **5.** the length of time that elapsed between the occurrence of the crime and the next opportunity the witness had to see the defendant.

[***Telfaire*** **G.** .You may also take into account that an identification made by picking the defendant out of a group of similar individuals is generally more reliable than one which results from the presentation of the defendant alone to the witness.]

Telfaire **H.** If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to [him] [her] for identification, you should scrutinize the identification with great care.

[***Telfaire*** **I.** You may take into account any occasions in which the witness failed to make an identification of the defendant, or made an identification that was inconsistent with [his] [her] identification at trial.]

The Government has the burden of proving identity beyond a reasonable doubt. It is not essential that the witness be free from doubt as to the correctness of the identification. However you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may find [him] [her] guilty. If you are not convinced beyond a reasonable doubt that the defendant was the person who committed the crime, you must find the defendant not guilty.

Committee Comments

See United States v. Telfaire, 469 F.2d 552, 558-59 (D.C. Cir. 1972); 1A Kevin F. O'Malley, et al., *Federal Jury Practice and Instructions*: Criminal §§ 14.10, 14.11 (5th ed. 2000). *See generally* West Key # "Criminal Law" 566, 785(10), 829(16), 1173.2(8).

Although the court in *Telfaire* found the case before it was not one requiring a special eyewitness instruction, as part of its appellate function it drafted an eyewitness instruction for future use in appropriate cases. The instruction in this manual is basically the same instruction. However, changes have been made in vocabulary and sequence and repetitive material has been eliminated.

The purpose of the *Telfaire* instruction was to adopt the approach of *United States v. Barber*, 442 F.2d 517, 528 (3d Cir. 1971) to (1)"obviate skeletal pattern instructions" and (2) "assure the essential particularity demanded by the facts surrounding each identification." 469 F.2d at 557. *Telfaire* stressed that the instruction was to be used as a model, with the language to be revised and adapted to suit the proof and contentions of each case. *Id.*

This Circuit has strongly recommended the giving of a *Telfaire* instruction, if requested, in a case in which the reliability of eyewitness identification of a defendant presents a serious question, although the exact language need not be given, and further, where the government's case rests solely or substantially on questionable eyewitness identification, it is reversible error to refuse to give a *Telfaire*-type instruction. *United States v. Mays*, 822 F.2d 793, 798 (8th Cir. 1987); *Williams v. Lockhart*, 736 F.2d 1264, 1267 (8th

Cir. 1984); *United States v. Cain*, 616 F.2d 1056, 1058 (8th Cir. 1980); *United States v. Greene*, 591 F.2d 471, 474-77 (8th Cir. 1979); *Durns v. United States*, 562 F.2d 542, 549-50 (8th Cir. 1977); *United States v. Dodge*, 538 F.2d 770, 783-84 (8th Cir. 1976); *United States v. Roundtree*, 527 F.2d 16, 19 (8th Cir. 1975).

In *Dodge*, the court indicated it would view with concern the failure to give specific and detailed instructions on identification in future cases where the identification of the defendant is based solely or substantially on eyewitness testimony. 538 F.2d at 784. Failure to give such an instruction in that case was not grounds for reversal since the identification was not considered "questionable." *See also United States v. Johnson*, 848 F.2d 904, 906 (8th Cir. 1988) holding that a specific eyewitness instruction was not necessary where nothing suggested that the eyewitness' testimony was unreliable. A general credibility instruction was held sufficient. In *Durns* failure to include the first and last paragraphs of *Telfaire* was found not to be error where there was substantial circumstantial evidence in addition to the eyewitness identification. 562 F.2d at 549-50.

In *Greene* the court found failure to give the instruction reversible error, analyzing the basic question as whether eyewitness testimony is essential to support a conviction. 591 F.2d at 475. Three factors not present in *Dodge* were found present in *Greene*: 1) the eyewitness identification was the sole basis for conviction; 2) there was the possibility of misidentification and 3) the trial court gave no instruction alerting the jury to the crucial role that eyewitness identification played in that case. 591 F.2d at 476. It should be further noted

that the *Telfaire* instruction was requested. 591 F.2d at 474-75 n.4.

In *Cain* and *Mays* there was no prejudicial error to refuse to give a requested *Telfaire* instruction where the identification testimony was strongly corroborated. 616 F.2d at 1058-59; 822 F.2d at 798. In *Roundtree* the court found no error where the instruction had not been requested. 527 F.2d at 13.

In *United States v. Grey Bear*, 883 F.2d 1382 (8th Cir. 1989), the court upheld a trial court's refusal to give a very detailed identification instruction where the instruction given adequately pointed out the relevant considerations to be weighed in gauging eyewitness testimony including accurate recollection and the ability to observe.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of Detectives' Motion for
Summary Judgment and Suggestions in Support

[Intro, Tables of Contents & Authorities omitted]

Digest of
Statement of Undisputed Material Facts

1. Plaintiffs Terrance, Ricardo and Rosalind Morris are residents of Kansas City, Missouri, and reside at 1318 East 62nd Street. Plaintiff's Complaint, pg. 4 at ¶5-7.

Family's Response: *Undisputed.* App. 56a.

2. "Dink" and "Mont" are the lifelong nicknames of Ricardo and Terrance Morris, respectively. Id., pg. 11 at ¶ 42.

Family's Response: *Undisputed.* App. 56a.

3. Defendants Detective Lanpher, Sergeant Schweitzer, ...are employees of the Kansas City, Missouri, Board of Police Commissioners. Id., pg. 4 at ¶8.

Family's Response: *Undisputed.* App. 56a.

4. On July 28, 2003, police officers from the Kansas City Missouri Police Department were dispatched to 6206 Paseo in regards to the report of a shooting. Exhibit 1, Affidavit/Application for Search Warrant. App. 201a.

Family's Response: *Undisputed.* App. 56a.

5. When officers located the shooting victim, the victim stated that two black males confronted in his kitchen and these unknown men shot the victim several times. Id. App. 201a-202a.

Family's Response: *Controverted in part.* App. 56a.

6. Detective Lanpher investigated the shooting at 6206 Paseo. Id. App. 201a-203a.

Family's Response: *Undisputed.* App. 56a.

7. On July 29, 2003, Detective Lanpher interviewed the victim at that Research Medical Center. During that interview, the victim was asked if he know of anyonewho would have done this to him and indicated that he believed his roommate was somehow involved but that two individuals who associated with his roommate were the ones who did the actual shooting. Exhibit 3, Investigative Report dated July 30, 2003. App. 152a-154a.

Family's Response: *Controverted.* App. 57a-58a.

8. The victim told Detective Lanpher that the he only knew the individuals who shot him as "Dink" and "Mont," but he would be able to identify these individuals who attacked him. Id. App 154a.

Family's Response: *Controverted.* App. 58a.

9. After confirming the identities of "Dink" and "Mont" as Terrance and Ricardo Morris, Detective Lanpher returned to the Research Medical Center and presented the victim with a photograph lineup consisting of six black males all similar in appearance. One of the pictures was of Ricardo Morris. Id.

Family's Response: *Controverted in part.* App. 58a.

10. The victim identified Ricardo Morris as one of the persons who shot him. Id. App. 154a.

Family's Response: *Controverted.* App. 58a.

11. Based on the information received from the investigation, Detective Lanpher submitted an application for a warrant to search the residence of Terrance and Ricardo Morris. Exhibit 1. App. 201a.

Family's Response: *Undisputed in part.* App. 59a.

12. On July 29, 2003, a judge for the Circuit Court of Jackson County, Missouri, signed a search warrant from the Morris home to search and seize firearms, projectiles, shell casings, live ammunition, trace evidence including but no limitedto blood, hair, fibers, and any other microscopic evidence. Exhibit 2, Search Warrant.

Family's Response: *Controverted.* App. 59a.

13. On July 30, 2003, officers of the Tactical Entry Team (also known as the 630 Squad) for the Kansas City Missouri Police Department executed the search warrant on the Morris residence. Complaint, pg. 15 at ¶56; Exhibit 4, Report Form dated July 30, 2003. App. 204a-205a.

Family's Response: *Undisputed.* App. 59a.

[14-20. Detectives' Facts 14-20 omitted]

21. Terrance Morris did not comply with Police Officer Hernandez's instructions and Police Officer Hernandez forced Terrance Morris onto the floor. Exhibit 5, Deposition of Anthony Hernandez, pg. 13, ln. 4-12.

Family's Response: *Controverted.* App. 59a.

[22-28. Detectives' Facts 22-28 omitted]

V. Digest of Suggestions in Support

A. Standard of Review

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment is appropriate against a party who fails to make a showing sufficient to establish that there is a genuine issue for trial about an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

B. COUNT I Against Defendant Lanpher for Illegal Application for Search Warrant

In Count I of their Complaint, plaintiffs allege that Detective Lanpher lacked sufficient probable cause to obtain an search warrant to enter their residence.

In the context of a police officer obtaining a search warrant, qualified immunity is lost onlywhere the warrant application is so lacking an indicia of probable cause as to render official belief in its existence unreasonable. *George v. City of St. Louis*, 26 F.3d 55, 57 (8th Cir. 1994). In the present matter, Detective Lanpher had sufficient probable cause to believe that Terrance and Ricardo Morris were involved in the shooting at 6206 Paseo to support his application for a warrant to search their residence.

The doctrine of qualified immunity provides that government officials preforming discretionary functions are generally shielded from liability for civil claims insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Courts must decide whether the official's action was objectively reasonable in light of the legal rules that were clearly established at the time the action occurred. *Id.* Officials do not lose their qualified immunity because of a mistaken, yet reasonable belief, nor do officials loose their immunity because of a reasonable mistake as to the legality of their actions. *Saucier v. Katz*, 533 U.S. 194, 205-206 (2001).

When analyzing qualified immunity the Court must follow a two step analytical process. The court must first consider the threshold inquiry of whether the facts alleged, taken in the light most favorable to the party asserting the injury, show the defendant's conduct violate a constitutional right. *Id.* at 201. If a constitutional right has not been violated, it is unnecessary to inquire further regarding qualified immunity. *Id.* If a violation is established, the second

inquiry is whether the right was clearly established at the time the violation occurred. *Id.*

In the present matter, this Court need go no further than the first step of the qualified immunity analysis - whether Detective Lanpher's conduct violated plaintiffs' constitutional rights. To be valid, a search warrant must be based upon a finding by a neutral and detached judicial officer that there is probable cause to believe that evidence, instrumentalities, or fruits of a crime, contraband, or a person for whose arrest there is probable cause may be found in the place to be searched. *Warden v. Hayden*, 387 U.S. 294 (1967). The standard of probable cause for the issuing judge is whether, given the totality of the circumstances, "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

During his investigation, Detective Lanpher obtained more than sufficient evidence to establish probable cause that Terrance and Ricardo Morris were involved in the shooting. Specifically, the victim indicated that he knew the shooters as "Dink" and "Mont", nicknames for Terrance and Ricardo Morris. The victim then picked Ricardo Morris out of a photograph lineup. Based on this information, a judge in Jackson County, Missouri, held there was sufficient probable cause to suspect Terrance and Ricardo Morris and issued a search warrant.

Summary judgment is appropriate if there is any reasonable basis to conclude that probable cause existed. *Cross v. City of Des Moines*, 965 F.2d 629, 632 (8th Cir.1992). Defendant Lanpher need not show that there was only one reasonable conclusion on

whether probable cause existed, but rather, this Court should ask whether Defendant Lanpher acted reasonably under the circumstances at the time of his investigation, not whether another reasonable, or more reasonable interpretation of the facts can be constructed years later. Id. Probable cause is "a fluid concept-turning on the assessment of probabilities in particular factual contexts- not readily, or even usefully, reduced to a neat set of legal rules." *Gates*, 462 U.S. at 232. Applications and affidavits should be read with common sense and not in a hyper technical fashion. *United States v. Ventresca*, 380 U.S. 102, 109 (1965). While plaintiffs may attempt to cloud the facts and circumstances surrounding Detective Lanpher's investigation, the undisputed facts remain that the victim of the shooting identified Ricardo Morris as the perpetrator of this crime which established sufficient probable cause to search the Morris residence. Defendant Lanpher's reliance of the statements of the victim can hardly be considered unreasonable and Defendant Lanpher is entitled to judgment as a matter of law.

[Counts III-VI. Detectives' Suggestions omitted]

Count II Against Defendant Schweitzer and
Count VII Against the Kansas City Board of Police
Commissioners for Failure to Train and Supervise

Plaintiffs bring 42 U.S.C. § 1983 claims that Schweitzer failed to supervise Lanpher during Lanpher's investigation into the shooting and a claim against the Board for failure to train and supervise all the defendant officers. A supervisor may not be held liable under 42 U.S.C. § 1983 for the constitu-

tional violations of a subordinate. *Boyd v. Knox*, 47 F.3d 966, 968 (8th Cir. 1995). One cannot be held liable for another's act simply because he or she has supervisory authority over one who deprived plaintiff of a constitutional right. *Temple v. Dahm*, 905 F.Supp. 670, 673 (D.Neb. 1995). Rather, a supervisor's liability arises only if she directly participates in a constitutional violation or if failure to properly train and supervise the offending employee caused a deprivation of constitutional rights. *Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996). If the claim against the defendant officers does not survive summary judgment, then the failure to train or supervise claim against Schweitzer and the Board necessarily fail as a matter of law. See *Schulz v. Long*, 44 F.3d 643, 650 (8th Cir. 1995).

In order for Schweitzer or the Board to be found liable under 42 U.S.C. § 1983 for failing to train or supervise, plaintiffs must demonstrate: (1) defendants received notice of a pattern of unconstitutional acts committed by the subordinate; (2) defendants demonstrated deliberate indifference to or tacit authorization of the offensive acts; (3) defendants failed to take sufficient remedial action to train or supervise the offending subordinate; and, (4) such failure proximately caused injury to the plaintiffs. *Owl v. Robertson*, 79 F.Supp.2d 1104, 1114 (D.Neb. 2000) (emphasis added); *Otey v. Marshall*, 121 F.3d 1150, 1155 (8th Cir. 1997).

As to the first element, there is no evidence that the defendant officers, participated in a "pattern of unconstitutional acts." For the reasons explained in these suggestions, none of the defendant officers actions were not unconstitutional. Even if this Court

disagrees, there is no evidence that the defendant officers engaged in an ongoing "pattern." As to the second element, there is no evidence that the Schweitzer or the Board knew of or authorized the actions plaintiffs complain about. Because the warrant was not unconstitutional, Schweitzer and the Board were under no obligation to take "remedial action" or provide additional training as contemplated by factor three.

V. CONCLUSION

WHEREFORE, for the reasons set forth herein, Defendants respectfully request this Court sustain their motion for summary judgment, enter costs against Plaintiffs, and order further relief as deemed just and proper.

Dated: November 13, 2006

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of the Family's Suggestions in Opposition to Defendants' Motion For Summary Judgment

[Cover, Tables of Contents & Authorities omitted]

Digest of Responses to Detectives' Statement Of Material Facts

1. Undisputed.

2. Undisputed.

3. Undisputed.

4. Undisputed.

5. Undisputed that the victim stated that two unknown black males confronted him. Plaintiffs dispute that the evidence cited by Defendants in paragraph 5, indicates the victim stating that he was shot by both attackers. Plaintiffs #18. July 30, 2003, Affidavit/Application for Search Warrant. pp. Morris 12-13. App. 202a.

6. Undisputed.

7. Plaintiffs dispute that Defendant Lanpher's account referenced by Defendants in paragraph 7 is accurate. This lawsuit charges Defendant Lanpher with making false and inaccurate representations in order to get a search warrant. His unsworn attributions to the shooting victim are not in compliance with Rule 56. Defendant Lanpher asked the shooting victim, a heavily armed drug dealer and drug abuser (Plaintiffs #36. July 29, 2003, Report by Hagen. pp. Morris 58-67) App. 99a-104a, who has been shot three times and has had emergency surgery (Plaintiffs #50. KCPD CST Deborah Hagen handwritten notes. p. Board 162) to speculate about possible attackers. Plaintiffs #28, July 30, 2003, Report by Lanpher, pp. Morris 40-43. App. 154a. The shooting victim states that he does not know Plaintiffs Ricardo Morris and Terrance Morris personally.. Id. The shooting victim had not lived in the neighborhood very long. Plaintiffs #10, Jackson County, Missouri, recorded document 2003K0045417-Quitclaim Deed, 6206 Paseo. This "identification" does not even appear in Lanpher's report until the fifth paragraph. Plaintiffs #28, pp. Morris 40. App. 152a-154a. Under oath, Defendant Lanpher gave an incredible explanation as to why the shooting victim would not have said who shot him right away at the beginning of the interview. Lanpher Depo., P. 21:13-22:7. App. 125a. Defendant Lanpher admitted that he did not ask the shooting victim about: 911 reports, the lighting in his house at 11:00 pm, the clothing of his attackers, or the height and weight of the attackers. Id., P. 16:all-28:all. App. 120a-131a . Most significantly, Defendant Lanpher backtracks on what he actually asked the shooting victim, it was a request to specu-

late about possible suspects and not an identification of the face of the person at the other end of the gun. Id. 28:1-29:4. App. 130a-131a.

8. Plaintiffs dispute that Defendant Lanpher's account referenced by Defendants in paragraph 8 is accurate, on the same facts stated in Plaintiff's paragraph 7 above.

9. Undisputed that Defendant Lanpher presented a photograph lineup. Plaintiffs dispute the photographic lineup referenced by Defendants in paragraph 9 was proper because it was the same photographic lineup presented to the shooting victim's roommate Jason Lancaster the night before, as evidenced by the fact that his initials are on the lineup to bolster the likelihood of the shooting victim making the same identification. Plaintiffs #28, p. Morris 43. App. 158a .Plaintiffs #40, July 29, 2003, Report by Lanpher, pp. Morris 80-81. App. 163a. Jason Lancaster's identification was apparently in response to the question if he merely recognized Ricardo Morris and not whether he suspected any involvement in the shooting. Id., p. Morris 81. App. 163a, *see also* ¶54 at App. 68a.

10. Plaintiffs dispute that the victim identified Ricardo Morris as one of the persons who shot him as stated in Defendants' paragraph 10. As stated in Plaintiffs' paragraph 7 above., Defendant Lanpher admitted under oath that the identification was speculation about possible involvement and not in response to a clear question about recognizing the face of the person who shot him. Lanpher Depo., 28:1-29:4. App. 130a-131a. *see also* ¶54 at App. 68a.

11. Undisputed that Defendant Lanpher submitted the July 30, 2003, Affidavit/ Application for Search Warrant. Plaintiffs #18. pp. Morris 12-13. App. 201a-203a.

12. Plaintiffs dispute that the search warrant referenced in Defendants' paragraph 12 identified firearms, projectiles, shell casings, live ammunition, trace evidence including but not limited to blood, hair, fibers, and any other microscopic evidence. No crime scene technicians are identified on July 30, 2003, reports. Instead the warrant stated "Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights." Plaintiffs #19, July 30, 2003, Search Warrant and Return. pp. Morris 14-15. . No such evidence was found. Id.

13. Undisputed.

[14-20. The Family's Responses 14-20 omitted]

21. Plaintiffs dispute that Terrance Morris did not comply with Police Officer Hernandez's instructions as stated in Defendants' paragraph 21. All Plaintiffs had no involvement with the crime being investigated. Plaintiffs #42 u. September 25, 2003, Statement of Lanpher, pp. Morris 204-212, at 210.

[22-28. The Family's Responses 22-28 omitted]

Digest of Family's Statement of Material Facts

29. Plaintiff, Rosalind Morris, (hereinafter, "Ms. Morris") resides in her home at 1318 East 62nd Street. Kansas City, Missouri 64110, (hereinafter, "Morris Home") and has so resided there at all times

since she acquired said real property by the Warranty Deed filed August 5, 1994. Plaintiffs # 4, Jackson County, Missouri, recorded document 1994K1153442-Special Warranty Deed 1618 East 62nd St.

Detectives' Response: *None.* App. 85a.

30. Ms. Morris is the mother of Plaintiffs Terrance Morris, (hereinafter, "Terrance", born March 11, 1981, and now 25 years old), and Ricardo Morris, (hereinafter, "Ricardo", born June 24, 1979, and now 27 years old), and all of them enjoy a reputation in the community as responsible, law abiding, and gainfully employed citizens. Terrance Morris Depo., 10:8-13:9; Ricardo Morris Depo., 10:3-12:4; Rosalind Morris Depo., 5:23-11:9.

Detectives' Response: *None.* App. 85a.

31. Ms. Morris, Terrance, and Ricardo, each and all, have never had any involvement with criminal activity and more particularly, any crimes involving violence, firearms, illegal commerce, or controlled substances, and none of them have any record of convictions for anything more serious than traffic ordinance violations or late payment of the fines assessed for the same. Terrance Morris Depo., 12:12-13:9,; Ricardo Morris Depo., 37:1-41:1; Rosalind Morris Depo., 10:25-11:9; Plaintiffs # 42 e, August 27, 2003, History checks of Plaintiffs. pp. Morris 109-114. App. 164a-165a.

Detectives' Response: *None.* App. 85a.

32. On July 28, 2003, at approximately 11:00 PM, two assailants fired gunshots at the owner-resident (hereinafter, "Gunshot Victim") of 6206 Paseo, Kansas City, Missouri, an address several houses away from the Morris Home. Plaintiffs # 14, July 28, 2003, Field Incident Report by Coe. pp. Morris 3-6. App. 93a-94a.

Detectives' Response: *None.* App. 85a.

33. Gunshot Victim suffered serious gunshot wounds from which he has survived. Plaintiffs #50, p. Board 162.

Detectives' Response: *None.* App. 85a.

34. Before paramedics transported Gunshot Victim to the hospital, he reportedly told KCPD officers that two unknown black male suspects kicked in the back door and then shot him. Plaintiffs # 14, p. Morris 3. App. 94a.

Detectives' Response: *Undisputed in part.* App. 85a-86a.

35. The KCPD officers processing the crime scene subsequently sought to secure a search warrant for Gunshot Victim's home, and, within four hours after the shooting, obtained a warrant approved by a Jackson County Judge at 2:39 AM, on July, 29, 2003. Plaintiffs # 26, July 29, 2003, Search Warrant & Return. pp. Morris 25-36, at 25.

Detectives' Response: *None.* App. 86a.

36. In processing the crime scene and executing the search warrant for Gunshot Victim's home, KCPD officers discovered that Gunshot Victim maintained an arsenal of weapons and ammunition including: two Bushmaster semi-automatic assault rifles; more than 700 rounds of ammunition for said assault rifles; a Mossberg 12-gauge shotgun which was stored under Gunshot Victim's bed with the safety set on "fire' and a live shell in the chamber; live shotgun shells; and ammunition and hardware suitable for weapons not then found, including 22-caliber long rifle ammunition and a magazine for a Colt 5.56 mm handgun. Plaintiffs # 36, pp. Morris 61-62. App. 102a-104a.

Detectives' Response: *None.* App. 86a.

37. In processing the crime scene and executing the search warrant for Gunshot Victim's home, police discovered evidence indicating that Gunshot Victim was likely involved in the illegal trafficking, distribution, sale, and use of mind-altering and illegal controlled substances including: an Ohaus CS-2000 digital gram scale with a white residue; a Rite Weight digital pocket balance with a white residue later analyzed to be Cocaine, a schedule II controlled substance; two plastic bags containing a leafy green substance later identified to be Marijuana, a schedule I controlled substance; and residual amounts of the same green leafy substance on a kitchen counter and the bedroom dresser, both of which indicated recent use and consumption of Marijuana by Gunshot Victim or visitors to his home. Id., at Morris 60. App. 100a-102a. Plaintiffs # 38, July 31, 2003, Report and

notes by Jansen. pp. Morris 70., Board 169-178. App. 108a-109a.

Detectives' Response: *None.* App. 86a.

38. In processing the crime scene and executing the search warrant, police also discovered indications that Gunshot Victim was remodeling the bungalow-sized home in a strange, garish, and ostentatious style not in keeping with its original layout; or, similarly sized homes in its immediate vicinity, including: installing an aquarium into the wall between the dining room and bedroom and viewable from both; installing a large screen TV into the living room wall; and, converting a bedroom into a hot tub room. Plaintiffs # 36, pp. Morris 59-64. App. 98a-107a.

Detectives' Response: *None.* App. 86a.

39. In processing the crime scene and executing the search warrant, police also found in Gunshot Victim's half of the shared easement garage, a boxed Jacuzzi tub, an air conditioning unit with severed wires and pipes indicating that it was probably stolen from its previous installation, and a four wheeler all-terrain vehicle. Id. App. 106a.

Detectives' Response: *None.* App. 86a.

40. Soon after the shooting, KCPD officers interviewed Gunshot Victim's next-door neighbor to the south and the neighbor reportedly stated: that he heard a shot; and, in looking out the window he could see and hear Gunshot Victim trying to summon help by making noise and calling out; that he responded to Gunshot Victim's cries for help by going

downstairs and looking out his backdoor; and, that upon seeing indications of an intruder in Gunshot Victim's garage with a flashlight, he yelled "Police Officer," and caused that intruder to flee on foot. Plaintiffs # 22, July 29, 2003, Report by Eikel. p. Morris 20. App.96a-97a.

Detectives' Response: *None.* App. 86a.

41. The neighbor in paragraph 30 above reportedly further stated to KCPD officers that the house had been a drug house before Gunshot Victim moved in and that a white male (hereinafter, "Jason Lancaster") resided with Gunshot Victim, an African-American male. Reportedly, the neighbor further stated that he has never seen Gunshot Victim or Jason Lancaster go to work and that he sometimes saw them "loading up two 4-wheelers on a ramp." Id. App. 97a.

Detectives' Response: *None.* App. 86a.

42. On or about noon of July 29, 2003, the next day after the shooting, KCPD officers responded to a call from a neighboring resident who lived on the east side of The Paseo and across the median dividing The Paseo's northbound and southbound traffic lanes, who reportedly stated that he had seen Jason Lancaster, identified as "the suspect of the assault," riding a yellow and white four wheel all-terrain vehicle, (hereinafter, "yellow ATV") in the driveway of Gunshot Victim's home and, that Jason Lancaster later sped away from the scene wearing a yellow and white helmet. Plaintiffs # 27, July 29, 2003, Report by Teague. pp. Morris 37-39. App. 111a-112a.

Detectives' Response: *None.* App. 86a.

43. Approximately two hours later, a KCPD officer was waved down by a concerned motorist who then reportedly said that: earlier that day, he had been waiting for the traffic light at the intersection of Volker Boulevard and Troost Avenue when a white male, later confirmed to be Jason Lancaster, arose out of Brush Creek riding a yellow ATV; and that, soon after Jason Lancaster appeared, a black and silver pistol fell from his pants and onto the street; and that, Jason Lancaster retrieved the firearm and sped from the scene. Id. App.112a.

Detectives' Response: *None.* App. 86a.

44. As a result of the reports in paragraphs 32 and 33 above, an "all call for a party armed" went out to KCPD officers on patrol to alert them of the need to apprehend Jason Lancaster. Id. App. 112a.

Detectives' Response: *None.* App. 86a.

45. Later that afternoon, Jason Lancaster led KCPD officers on a high speed pursuit through neighborhoods and highways in Kansas City, Missouri, while aboard the yellow ATV; such pursuit ended with the apprehension and arrest of Jason Lancaster by KCPD officers. While in the course of fleeing from KCPD officers on the yellow ATV, Jason Lancaster discarded a Smith & Wesson Model SW9V semi-automatic handgun in the driveway of a residence in the 5800 block of Blue Hills Road in Kansas City, Missouri. Plaintiffs # 42f, July 29, 2003, Report by Finn. pp. Morris 125-128. App. 113a-116a. .;

Plaintiffs # 37, July 29, 2003, Report by VanRyn. pp. Morris 68-69, 84-85. App. 117a-118a.

Detectives' Response: *None.* App. 86a.

46. On or about 7:19 PM of July 29, 2003, and within a few hours of the arrest of Jason Lancaster, KCPD Detective Jarrett Lanpher, ((hereinafter, "Defendant Lanpher"), interviewed Gunshot Victim at Research Medical Center, Kansas City, Missouri. This interview occurred less than 24 hours after Gunshot Victim: sustained the gunshot wounds, underwent emergency surgery and received anesthesia for the same; had very likely received significant amounts of medication for the alleviation of pain; and was also likely suffering from the mind-altering effects of recent and long term abuse of illegal drugs. Plaintiffs # 28, pp. Morris 40-41, App. 152a-154a. Plaintiffs # 38, pp. Morris 70., Board 169-178. App. 100-102a

Detectives' Response: *Controverted in part.* App. 86a.

47. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly recalled the attack by first describing "two black males" as the assailants. Gunshot Victim reportedly also described his efforts to summon help by making noise and calling out after he had retreated to the basement of the house, and that, at one point, one attacker came to a broken basement window and threatened to try harder to kill Gunshot Victim, but only if he continued to make loud noise. Plaintiffs # 28, pp. Morris 40-41. App. 152a-154a.

Detectives' Response: *Undisputed but claims omissions.* App. 86a.

48. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that Jason Lancaster lived with him and that Jason Lancaster "hung with some dudes around the corner on east 62nd in a red brick house." Id. App.153a.

Detectives' Response: *None.* App. 86a.

49. The Morris Home is not the red brick house described by Gunshot Victim in paragraph 48 above. The Morris Home is neither red nor brick. Defendant ignored that discrepancy when applying for a search warrant. Plaintiffs #18. pp. Morris 12-13 App. 201a.; Plaintiffs #19, pp. Morris 14-15.

Detectives' Response: *Undisputed with clarification.* App. 86a-87a.

50. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that he did not know anything about assault rifles being in his home. Plaintiffs # 28, pp. Morris 40-41. App. 87a.

Detectives' Response: *None.* App. 87a.

51. According to the written interview summary of Defendant Lanpher, at the conclusion of the interview, Defendant Lanpher reportedly asked Gunshot Victim to speculate about whether he knew any possible suspects, and that Gunshot Victim reportedly stated "Dink" and "Mont", two persons who Gunshot Victim reportedly believed to be acquaintances of Jason Lancaster, even though Gunshot Victim did not

identify anyone at the crime scene when emergency responders arrived, Defendant Lanpher now reported that Gunshot Victim claimed that he could identify his attackers. Id. App. 154a.

Detectives' Response: *Objection.* App. 87a.

52. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly recognized Ricardo in a photo lineup of six subjects, reportedly weakly scrawled his initials on the back of the photo as an acknowledgement, and reportedly claimed that Ricardo was one of his attackers. Plaintiffs #18. pp. Morris 12-13. App. 202a-203a.

Detectives' Response: *None.* App. 87a.

53. In preparing the photo lineup, Defendant Lanpher purportedly conducted a law enforcement computer check of Terrance and Ricardo. That computer check would have made it plainly obvious to Defendant Lanpher that neither Terrance nor Ricardo have any history or criminal record of prior and similar bad acts. Id.; App. 202a-203a. Plaintiffs # 42 e, pp. Morris 109-114. App. 164a-165a.

Detectives' Response: *Objection.* App. 87a.

54. Plaintiffs incorporate by reference the material facts stated in paragraphs 7, 8, 9, and 10 above in regards the faulty photo lineup procedure and the questions posed. App. 57a-58a.

Detectives' Response: *None.* App. 87a.

55. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that he had no idea why anyone would want to

attack him, and that all he does for a living is buy, fix-up, and then sell, houses. Plaintiffs # 28, pp. Morris 40-41. App. 154a.

Detectives' Response: *None.* App. 87a.

56. On or about 7:19 PM of July 29, 2003, Defendant Lanpher interviewed Jason Lancaster. During the course of the interview, Jason Lancaster told Detective Lanpher: (1) someone named Fuzzy was having problems with the Gunshot Victim and was a potential suspect; (2) that he, Jason Lancaster, had visited the Gunshot victim at the hospital on July 29, 2003; that the gunshot victim had described the assailants as "one of them stocky and the other a short dude;" Plaintiffs # 40, July 29, 2003, Report by Lanpher, pp. Morris 80-81. App. 159a-163a.

Detectives' Response: *None.* App. 87a.

57. Defendant Lanpher had evidence in his case file that both Terrance Morris and Ricardo Morris were over 6 feet tall and less than 170 pounds. Plaintiffs #33. July 30, 2003, Wanted/Cancellation Notice. p. Morris 51. Plaintiffs #34. July 30, 2003, Wanted/Cancellation Notice. p. Morris 52. *see also* ¶53, App. 68a., and ¶59(5) App. 70a., and evidence cited in those paragraphs at App. 164a-165a., and App. 132a-136a.

Detectives' Response: *None.* App. 87a.

58. On or about 1:29 PM of July 30, 2003, Defendant Lanpher, presented, subscribed and swore an Affidavit/Application for a Search Warrant before a Jackson County Judge, who then issued a search warrant to enter the Morris Home and to search for

"Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights." Plaintiffs #19. pp. Morris 12-13.

Detectives' Response: *None.* App. 87a.

59. In presenting the Affidavit in paragraph 57 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth, omitted facts that were material to a finding of probable cause, including: (1) Evidence that the Gunshot Victim, an identified information source in the affidavit was a drug dealer/ drug abuser, and that Fuzzy was identified as a rival who might attack him; Plaintiffs #40, pp. Morris 80-81, App. 162a. (2) that the drug dealer's roommate, an identified information source in the affidavit, was a convicted felon who had been arrested for felony eluding and felon in possession of a firearm after a high speed chase the day before; Plaintiffs #42 f, pp. Morris 80-81, App. 159a-161a. (3) that Lanpher considered Jason Lancaster a suspect but did not disclose that Jason Lancaster had visited the Gunshot Victim at the hospital; Plaintiffs #40, pp. Morris 80-81, App. 161a-163a. (4) that the only physical description that Defendant Lanpher had in his case file excluded Terrance Morris and Ricardo Morris; Plaintiffs #40, pp. Morris 80-81, App. 161a-162a. (5) that criminal background checks on Terrance Morris and Ricardo Morris indicated no violent crimes or drug offenses; Lanpher Depo., 33:14-38:16., App. 132a-136a. (6) that the Gunshot Victim did not know Terrance Morris and Ricardo Morris Plaintiffs # 28, pp. Morris 40-41. App. 154a.; and, (7) that the Gunshot Victim identified a red brick house when the Morris home is neither red nor

brick. Plaintiffs #18. pp. Morris 12-13. App. 201a-203a. *see also* ¶¶48-49, App. 67a. and evidence cited in those paragraphs at. App. 153a, and App. 201a.

Detectives' Response: *Objection.* App. 87a.

60. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth, intentionally cast a false light on the exculpatory and material fact that computer checks of Terrance Morris and Ricardo Morris indicated no violent crimes or drug offenses. Defendant Lanpher included in the Affidavit that "a computer check was conducted" for the purpose of implying to the prosecutor and the judge that he had verified criminal histories for prior and similar bad acts, when the opposite was true. Id., pp. Morris 12-13. Lanpher Depo. 33:14-38:16, App. 132a-136a.

Detectives' Response: *Objection.* App. 87a.

61. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth intentionally included the following false information: (1) that the gunshot victim had identified suspects immediately, and before the interview of neighbor Paul Willingham right after the shooting. Id., pp. Morris 12-13. App. 201a-202a . Plaintiffs #22. p. Morris 20, App. 96a-97a.; Lanpher Depo. 61:15-97:16, App. 140a-149a., when in fact, the Gunshot Victim only speculated about possible involvement after emergency surgery and more than 20 hours later, Plaintiffs # 28, pp. Morris 40-41. App. 152a-154a.; and, (2) that Neighbor(s) had claimed that Jason Lancaster

hung out at the victim's house, when in fact there was only one neighbor who made that claim and his information was that the Gunshot Victim visited as frequently and "conducted business" at the Morris Home. Plaintiffs #18. pp. Morris 12-13. App. 201a-203a.; Plaintiffs # 15, July 29, 2003, Report by Hiner. App. 110a . pp. Morris 7-8; Lanpher Depo. 61:15-97:16. App. 140a-149a. Lanpher further ignored the obvious discrepancy that he relied on a single source of information for one claimed fact, when that source's information, if believed, would have negated any need at all to do a photo lineup to identify a shooter. Lanpher Depo. 61:15-97:16. App. 140a-149a. Defendant Schweitzer, Lanpher's supervisor. also has trouble figuring out that if someone knows someone by sight and actually sees the person he knows shoot him, that there would be an instantaneous identification and no need for a photo lineup. Schweitzer Depo., 42:8-51:8.

Detectives' Response: *Objection*. App. 87a

[62-76. The Family's Facts 62-76 omittted]

77. No single item was seized pursuant to the Search Warrant. Plaintiffs #19, pp. Morris 14-15.

Detectives' Response: *None*. App. 87a.

78. When Ms. Morris was allowed to enter her own home, she discovered that her front door and its frame were severely damaged by Defendant Bronner and the KCPD 630-SQUAD, and that the Morris Home was in complete disarray with just about everything in the house removed from its normal stor-

age and thrown about the house. Rosalind Morris Depo. 25:2-31:4.

Detectives' Response: *None.* App. 87a.

79. When Defendant Lanpher departed from the Morris Home, he left a phone number and directions for Ricardo to call and assist with the investigation. Ricardo Morris Depo. 31:10-35:24.

Detectives' Response: *None.* App. 87a.

80. Terrance was booked, detained, and questioned. Terrance Morris Depo., 41:11-47:25.

Detectives' Response: *None.* App. 87a.

81. After Ms. Morris made contact with Ricardo, he reported to Police Headquarters for detention and questioning. In response to a question as to his whereabouts on the night of the shooting, he informed Defendant Lanpher that he was at work. Plaintiffs #31, August 6, 2003, Report by Lanpher, pp. Morris 47-48. App. 206a-207a.

Detectives' Response: *None.* App. 87a.

82. Defendant Lanpher easily verified with Ricardo's employer that Ricardo was at work at the time of the shooting, and then released Terrance and Ricardo from jail. Following Terrance's release, Ms. Morris transported him to Research Medical Center for treatment of his injury. Id. App. 87a.

Detectives' Response: *None.* App. 87a.

83. Ms. Morris, Terrance, and Ricardo reported the incident to the Defendant Board by filing a complaint with its Office of Citizen Complaints (herein-

after, "OCC") in the days immediately following the KCPD 630-SQUAD's forceful and unnecessary invasion of the Morris Home. Rosalind Morris Depo., 55:18-58:25.

Detectives' Response: *None.* App. 87a.

84. Rosalind Morris desired that the investigation also evaluate the fact that the tactical team executed a warrant on the home of innocent people and on false information. Rosalind Morris Depo., 79:1-80-25.

Detectives' Response: *None.* App. 87a.

85. As a result of the complaint, OCC directed the KCPD Internal Affairs unit to investigate the use of force by Defendant Hockemeier, and ignored all other aspects of the complaint. Plaintiffs #42 1, February 12, 2004, Summary and Memorandum. Morris 148-150. App. 208a-211a.

Detectives' Response: *None.* App. 87a.

[86-88. The Family's Facts 86-88 omitted]

89. Defendant Lanpher and his supervisor Defendant Schweitzer, apparently made no further effort to solve the shooting of Gunshot Victim after their misguided decision to direct the KCPD 630-SQUAD to break into the Morris Home on July 30, 2003, and, in October of 2003, they officially inactivated the investigation claiming that the Gunshot Victim completely refused to cooperate with KCPD efforts to solve the crime. Plaintiffs #13, October 30, 2003, Inactivation Report by Lanpher. pp. Morris 1-2. App. 212a-213a.

Detectives' Response: *Objection.* App. 88a.

90. Defendant Lanpher never went back to the hospital to tell the Gunshot Victim, whose house had an arsenal of weapons/ammo and drug dealing equipment, that the persons he "identified" as attacking him, Ricardo Morris and Terrance Morris, were instantly cleared of suspicion after their house was kicked in by the KCPD. Lanpher Depo., 40:2-40:25, 51:7-53:6, 111:8-113:5. App. 137a-139a, 149a-151a.

Detectives' Response: *None.* App. 88a.

91. Defendant Schweitzer was Defendant Lanpher's supervisor and directly participated in the investigation. Schweitzer Depo., 25:13-26:2. 42:2-75:5.

Detectives' Response: *None.* App. 88a.

INTRODUCTION

This is a civil rights action in which plaintiffs Terrance Morris, Ricardo Morris, and Rosalind Morris seek relief for violations of rights secured by the Civil Rights Act of 1871, 42 U.S.C. § 1983; and, of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution; and, for rights secured under the laws and Constitution of the State of Missouri. The Morris's are law abiding citizens whose house was kicked in by a Kansas City Police Department (KCPD) Tactical Team after a poor and dishonest investigation falsely identified them to be suspects for a crime in which none of them had any involvement.

The Tactical Team was executing a search warrant gotten after a detective claimed that the shooting victim, a heavily armed drug dealer, had identified his attackers in a "photo lineup." During the search warrant execution, the senior tactical team officer kicked Terrance Morris in the mouth. During a complaint investigation, that officer claimed that he was using his steel-toed boots to do nerve receptor defensive tactics on a passively resistant arrestee. The KCPD complaint investigators could not figure out that the officer's explanation was a bad one.

The detective who claimed that the heavily armed drug dealer had identified his attacker in a "photo lineup" never went back and told that dangerous person that the "shooters" he had "identified" were not responsible.

STANDARD FOR SUMMARY JUDGMENT

Under Federal Rule 56, Defendants must show "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is appropriate against a party who fails to make a showing sufficient to establish that there is a genuine issue for trial about an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

In ruling on a motion for summary judgment, it is the court's obligation to view the facts in the light

most favorable to the adverse party and to allow the adverse party the benefit of all reasonable inferences to be drawn from the evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970); *Inland Oil and Transport Co. v. United States*, 600 F.2d 725, 727-28 (8th Cir. 1979), *cert. denied*, 444 U.S. 991 (1979).

Defendants fail to establish that its stated material facts are undisputed and that they would be entitled to judgment as a matter of law.

COUNT I

Against Defendant Lanpher for Illegal Affidavit/ Application for Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

To assert a § 1983 claim, a plaintiff must prove that he was deprived of a right secured by the Constitution or the laws of the United States and that the deprivation was caused by a person who was acting under color of state law. *Flagg Bros., Inc. v. Brooks,* 436 U.S. 149, 155-57 (1978).

It is clearly established that the Fourth Amendment requires a warrant application to contain a truthful factual showing of probable cause. *Hunter v. Namanny*, 219 F.3d 825, 831 (8th Cir. 2000).

A warrant based upon an affidavit containing" deliberate falsehood" or "reckless disregard for the truth" violates the Fourth Amendment. *Franks v. Delaware*, 438 U.S. 154, 171 (1978). An official who causes such a deprivation is subject to § 1983 liability. See *Burk v. Beene*, 948 F.2d 489, 494 (8th Cir. 1991)

The right identified by Plaintiffs in count I is clearly established law. Further, Plaintiffs' statement of material facts establishes that the affidavit/application for search warrant submitted by Defendant Lanpher contained material omissions of exculpatory information and actual falsehoods as well.

Defendant Lanpher claims that he is entitled to qualified immunity. The doctrine of qualified immunity provides that government officials performing discretionary functions are generally shielded from liability for civil claims insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Courts must decide whether the official's action was objectively reasonable in light of the legal rules that were clearly established at the time the action occurred. Id. Considering the facts, Defendant Lanpher could not have reasonably believed that his deliberate omissions and falsehoods were permissible.

In reality, two thugs shot the resident at 6204 Paseo. That resident lived at the address only a short period of time. He admitted that he did not know any of the Morris family other than hearing two nicknames, and, during the investigation, he claimed that he suspects people who live in a "red brick house." The victim's house was searched as part of the crime scene investigation and a significant amount of firearms and evidence of drug dealing were found. He did not immediately identify anyone as the perpetrators. His roommate, a convicted felon, had an incredibly adventurous time the

next day as he ran from the police on a four wheel all terrain vehicle. Defendant Lanpher's affidavit to search the Morris Home did not include any of that interesting information.

One neighbor supposedly claims that the shooting victim and Plaintiffs Terrance Morris and Ricardo Morris are great friends and business associates. Detective Lanpher half believes that person and decides that he can rely on that neighbor enough to identify which nearby house to kick in, but not rely on him enough to realize that a photo lineup would not even be necessary if that neighbor was credible and the shooting victim had actually gazed into the face of the person who shot him.

Terrance and Ricardo are found not to have any record suggesting involvement in violent crimes. Further, the only physical descriptions in Defendant Lanpher's case file describe the perpetrators as one short and one stocky. Neither Terrance nor Ricardo can be described as short and/or stocky since both are over 6 feet tall and slight in build, and, Defendant Lanpher had that information. The roommate says that Fuzzy is a rival who might have done it, but that information remains hidden from the Judge.

Defendant Lanpher claims to rely on a photo lineup that comes pre-marked with identifications made by others and given in response to much different questions, and under oath and at deposition, Defendant Lanpher can not figure out the specific question he asked the gunshot victim prior to the identification.

Incredibly, Defendant Lanpher admits to not going back to the hospital and telling the Gunshot Victim that the person Lanpher claims was identified in a photo lineup was not responsible. Never mind viewing the facts in the light most favorable to the Plaintiff, give Defendant Lanpher the benefit of the doubt and figure that he would not really let an obvious criminal who like assault rifles and shotguns to continue to believe that obvious innocents tried to kill him in cold blood. If that were true, the Plaintiffs would face an unjustified threat of revenge from an obvious criminal for something that they did not do.

In addition to the omissions described above, the affidavit falsely claimed that the gunshot victim identified his attackers before the interview of the neighbor minutes after the shooting. It also falsely claimed that several neighbors indicated the roommate's association with the Morris home.

Franks provides a remedy that most often arises in a criminal case under a motion to suppress, an evidentiary hearing with a goal to reconstruct the affidavit/application for search warrant to include omissions and exclude false statements. Considering the omissions and falsehoods in this case in the light most favorable to the Plaintiffs, a reconstructed affidavit/ application would be so different than the one actually submitted that there is a genuine issue of material fact as to whether that reconstructed search warrant affidavit/application would be "so lacking in indicia of probable cause as to render official belief in its existence unreasonable." *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986) (citing *United States v. Leon*, 468 U.S. 897, 923 (1984), and,

whether a[n] affiant, compelled to be candid, would have any objectively reasonable belief that probable cause for a search of the Morris home existed.

Plaintiffs deserve a trial on Count I because Defendant Lanpher fails to make the required Rule 56 showing for summary judgment.

COUNT II

Against Defendant Schweitzer for Failure to Supervise Defendant Lanpher and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

A failure to supervise claim under § 1983 cannot stand unless there is an underlying constitutional violation. See *Sinclair v. City of Des Moines*, 268 F.3d 594, 596 (8th Cir. 2001). As discussed in regards to Count I above, Defendant Lanpher violated Plaintiffs' fourth amendment rights when he applied for the search warrant. A supervisor can be held liable only if he directly participated in the constitutional violation or if his failure to supervise caused the violation. *Otey v. Marshall*, 121 F.3d 1150, 1155 (8th Cir. 1997). Defendant Schweitzer would also be liable if he: (1) Received notice of a pattern of unconstitutional acts committed by subordinates; (2) Demonstrated deliberate indifference to or tacit authorization of the offensive acts; (3) Failed to take sufficient remedial action; and (4) That such failure proximately caused injury. *Id.* (quoting *Jane Doe A. v. Special Sch. Dist. of St. Louis County*, 901 F.2d 642, 645 (8th Cir. 1990)).

In this case, Defendant Schweitzer was Defendant Lanpher's supervisor and his supervisory liability is founded on his direct participation in the constitu-

tional violation suffered by Plaintiffs and described in Count I above. He was the senior officer and supervisor and he failed to supervise Defendant Lanpher and ensure compliance with constitutional requirements. Additionally, Defendant Schweitzer made unfounded rude remarks to Rosalind Morris when she was witnessing the search warrant execution aftermath and the injury to her son Terrance. Defendant Schweitzer should be held liable for his direct participation in the investigation and resulting violation of right.

[Remainder of Suggestions omitted]

Dated: December 18, 2006 Respectfully submitted,

/s/ Paul Matthew Tancredi
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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of Detectives' Reply Suggestions in
Support of Motion for Summary Judgment

Defendants, through counsel, offer the following reply suggestions in support of defendants' motion for summary judgment:

Undisputed Material Facts

Defendants admit that the documentary exhibits or deposition testimony referenced by plaintiffs in support of their Statement of Material Facts state as indicated in the numbered paragraphs set forth in plaintiffs' Statement. This is true of all of plaintiffs' numbered facts, with the following exceptions set forth below.[1]

A large portion of plaintiffs' facts are immaterial to this case, are hearsay, speculation, opinion, irrelevant, and are inadmissible at trial. A sizeable amount of plaintiffs' facts are not facts at all, but are

1. If defendants do not dispute that a documentary exhibit or deposition testimony states as indicated in plaintiffs' Statement of Material Facts, then plaintiffs' numbered paragraph is not addressed herein.

legal conclusions, argument by counsel, and characterizations of witness' testimony. None of this is appropriate in a statement of facts and these statements require no response by defendants.[2]

Reply to Family's Responses to
Defendants' Statement of Material Facts

1-6. No Reply by Detectives to the Family's Responses to Detectives' Material Facts 1-6.

7. Plaintiffs' reply to ¶7 is unsupported by admissible and immaterial evidence. Initially, plaintiffs argue that defendants' facts are not in compliance with Rule 56 with no further explanation. Defendants rely on the police report of Defendant Detective Jarrett Lanpher (herein Lanpher), a business record admissible pursuant to Rule 803(8).[3]

Furthermore, plaintiffs' assertions are not supported by the evidence presented. For instance, there is no evidence the shooting victim was a drug dealer, drug user or underwent emergency surgery at any time. This is all speculation and argument by plaintiffs and should not be considered by the Court.

8. No Reply by Detectives to the Family's Responses to Detectives' Material Fact 8.

9. Plaintiffs' response to ¶9 is speculation and argument and should not be considered by the Court. Plaintiffs' present no evidence, only speculation, that

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2. Responding to many of plaintiffs' facts would be nearly impossible due to the amount of inappropriate matter contained in them.

3 The parties have stipulated to the authenticity of this exhibit. See ECF Doc. 58 at ¶24.

the photograph line-up should to the shooting victim was improper or that the shooting victim knew of Lancaster's identification before the shooting victim selected the photograph of Plaintiff Ricardo Morris (herein Ricardo).

10. Plaintiffs present only argument, not admissible evidence, to dispute ¶ 10. The Court should not consider argument, without evidentiary support, to determine whether there is a dispute of material fact in this matter.

11-13. No Reply by Detectives to the Family's Responses to Detectives' Material Facts 11-13.

[14-20. The Detectives' Replies to the Family Responses to Detectives' Material Facts 14-20 omitted]

21. Plaintiffs' response to ¶21 is not supported by admissible evidence. For instance, plaintiffs' argue they "had no involvement in the crime being investigated" but present no evidence to support this assertion. Lanpher still considered Plaintiff Terrance Morris (herein Terrance) a subject of the investigation upon his release from jail. Plaintiffs' Exhibit 42u at pg. Morris 210.

[22-28. The Detectives' Replies to the Family Responses to Detectives' Material Facts 22-28 omitted]

Reply to Family's Statement of Material Facts

29-33. No Reply by Detectives to the Family's Material Facts 29-33.

34. Undisputed, with clarification. Defendants admit that the shooting victim stated at the scene that two black males shot him. There is no evidence

to support plaintiffs' argument that the attackers were "unknown" to the shooting victim.

35-45. No Reply by Detectives to the Family's Material Facts 35-45.

46. Undisputed that Lanpher interviewed the shooting victim at Research Medical Center, Kansas City, Missouri, on July 29, 2003. The remaining allegations are unsupported by the evidence presented. There is no evidence that victim underwent emergency surgery, received anesthesia, received "significant amounts of medication to alleviate pain" or was "suffering from the mind-altering effects of recent and long term abuse of illegal drugs."

47. Undisputed but omits the following: During the interview with Lanpher, the shooting victim was asked if he knew who may have shot him. The shooting victim told Lanpher that he though[t] Jason Lancaster and two persons the shooting victim knew as "Dink" and "Mont" were responsible for the shooting. Plaintiffs' Exhibit 28. App. 154a. "Dink" and "Mont" are the nicknames of Terrance and Ricardo. ECF Doc. 1, Plaintiffs' Complaint at pg. 11, ¶42. The shooting victim further stated that he would be able to identify the persons who attacked him. Plaintiffs' Exhibit 28. App. 154a.

48. No Reply by Detectives to the Family's Material Fact 48.

49. Undisputed, with clarification. Plaintiffs infer that the shooting victim stated his attackers lived at a red brick house. However, the shooting victim never told Lanpher that the attackers lived at any

particular residence. Deposition of Jarrett Lanpher, pg. 72:16-21, App. 145a.

50. No Reply by Detectives to the Family's Material Fact 50.

51. The entire ¶51 is argument that should not be included in a statement of facts and requires no response by defendants. Plaintiffs offer no citation to admissible evidence to support these arguments.

52. No Reply by Detectives to the Family's Material Fact 52.

53. Objection. Plaintiffs offer no admissible evidence to support these assertions. Lanpher did not run a criminal background check on plaintiffs during his investigation. Deposition of Jarrett Lanpher at pg. 36:8-11. App. 134a-135a.

54-58. No Reply by Detectives to the Family's Material Facts 54-58.

59.-61. Plaintiffs' ¶59, ¶60 and ¶61 are entirely argument that should not be included in a statement of facts and requires no response by defendants. Plaintiffs rely on speculation, assumption and conjecture to support these assertions which should not be considered by the Court.

[62-76. The Detectives' Replies to the Family's Statement of Material Facts 62-76 omitted]

77-85. No Reply by Detectives to the Family's Material Facts 77-85.

[86-88. The Detectives' Replies to the Family's Statement of Material Facts 86-88 omitted]

89. The entire ¶89 is argument that should not be included in a statement of facts and requires no response by defendants. Plaintiffs rely on speculation, assumption and conjecture to support these assertions which should not be considered by the Court.

90-91. No Reply by Detectives to the Family's Material Facts 90-91.

Detectives' Reply Facts

[92-108. Detectives' Facts 92-108 omitted]

Detectives' Reply Suggestions

Count I Against Defendant Lanpher
for Illegal Application for Search Warrant

The evidence in this case identified four possible suspects for the shooting at issue: Jason Lancaster (the [s]hooting victim's roommate, a white male), Terrance Morris (a black male), Ricardo Morris (a black male) and "Fuzzy" (an unidentified person). At the scene of the shooting, while being treated for his wounds, the shooting victim told officers that two black males shot him but gave no further description of his attackers. Of the known suspects to this crime, only Terrance and Ricardo fit that description. After being stabilized at a hospital, the shooting victim told Lanpher that he believed Lancaster, "Dink," and "Mont" were involved in the shooting. "Dink" and "Mont" are the nicknames of Terrance and Ricardo. After verifying the identities of "Dink" and "Mont," Lanpher returned to the shooting victim's hospital room and the shooting victim identified Ricardo as one of the persons who attacked him. This evidence,

alone, is more than sufficient to establish probable cause to obtain a search warrant.

Plaintiffs argue that this matter should be analyzed under the framework set forth in *Franks v. Delaware*, 438 U.S. 154 (1978). In *Franks*, the Supreme Court held a warrant is invalid if the affiant knowingly and intentionally, or with reckless disregard for the truth, includes a false statement in the warrant affidavit. 438 U.S. at 155-56. To prevail on a *Franks* challenge to a warrant, a party must first demonstrate that the law enforcement official deliberately or recklessly included a false statement or omitted a truthful statement from his warrant affidavit. *U.S. v. Coleman*, 349 F.3d 1077,1083 (8th Cir. 2003). "Mere negligence on the part of law enforcement officers" does not satisfy this initial requirement. *United States v. Gibson*, 123 F.3d 1121, 1124 (8th Cir.1997). If a party can show that an officer deliberately or recklessly included a false statement or omitted a truthful statement from his warrant affidavit, the party must then show that if the offensive content in the warrant affidavit is ignored, its remaining content "would be insufficient to establish probable cause." *Coleman*, 349 F.3d at 1083.

There is no evidence that Detective Lanpher falsified or deliberately or recklessly omitted a truthful statement from his warrant application. Plaintiffs attempt to cloud this issue with a plethora of misstated and/or irrelevant facts. For instance, plaintiffs claim that the shooting victim said Terrance and Ricardo lived in a red brick house. The victim never said anyone lived in a red brick house. What the victim told Lanpher was that he knew Terrance and Ricardo because he had seen them hanging out with

Lancaster at a red brick house. Similarly, plaintiffs argue that Lanpher falsified his affidavit to say "the gunshot victim identified his attackers before the interview of the neighbor minutes after the shooting." Not only is this statement false, plaintiffs do not dispute the victim identified Terrance and Ricardo as persons involved in the shooting. Warrant applications and affidavits should be read with common sense and not in a hyper technical fashion. *United States v. Ventresca*, 380 U.S. 102, 109 (1965). A common sense reading of Lanpher's affidavit demonstrates that he included the relevant facts relating to plaintiffs' suspected role in the shooting and presented the court a fair and accurate description of his investigation. Thus, plaintiffs have failed the first part of the *Franks* test and Lanpher is entitled to judgment as a matter of law.

Even if the Court finds plaintiffs have met the first part of the *Franks* test, the content of the application which plaintiffs do not dispute is sufficient to establish probable cause. Summary judgment is appropriate if there is any reasonable basis to conclude that probable cause existed. *Cross v. City of Des Moines*, 965 F.2d 629, 632 (8th Cir.1992). The facts still remain that during Lanpher's initial interview with the shooting victim, the shooting victim stated that "Dink" and "Mont" were involved in the shooting. Terrance and Ricardo are well known as "Dink" and "Mont." Furthermore, plaintiffs have presented no evidence why Lanpher should have doubted the shooting victim's identification of Terrance and Ricardo. There is more than sufficient probable cause to support Lanpher's application for a search warrant.

Finally, even if the Court finds that a constitutional violation may have occurred, Lanpher is still entitled to qualified immunity. Qualified immunity is only lost where the warrant application is so lacking an indicia of probable cause as to render official belief in its existence unreasonable. *George v. City of St. Louis*, 26 F.3d 55, 57 (8th Cir. 1994). Plaintiffs present no case law to suggest that an officer's reliance on the accounts of the events and identification of the suspects by the victim of the crime could ever be the basis for an unreasonable belief that probable cause existed. Therefore, Lanpher is also entitled to qualified immunity from plaintiffs' claims.

Count II Against Defendant Schweitzer
for Failure to Train and Supervise

It is undisputed that Schweitzer was Lanpher's supervisor throughout this investigation and was either present for, or reviewed the reports of, every aspect of the investigation. However, as previously discussed, there was not than sufficient probable cause to search the Morris residence and, therefore, Schweitzer can not be held liable under plaintiffs' failure to supervise claim.

[Counts III-VII. Detectives' Suggestions omitted]

V. CONCLUSION

WHEREFORE, for the reasons set forth herein, defendants respectfully request this Court sustain their motion for summary judgment, enter costs against Plaintiffs, and order further relief as deemed just and proper.

Dated: January 3, 2007

Respectfully submitted,

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Attorneys for Detectives

July 28, 2003, "Am I Dying?" Declaration
Report by Coe. (Reprinted Digest)

Kansas City, Missouri Police Department
Field Incident Report

Report Date: 07/28/2003
Time Received: 2310 Time Arrived: 2315
Time Cleared: 0616

Crime

Offense Classification: Assault (AGG)
Means of Attack: Gun
Location: 6206 Paseo, Kansas City

Victim

Last Name: Shields
First Name: Richard Init: D
Race: B Sex: M DoB: 03/26/73
Business: Unemployed
Rel./Acq. Name: Aleasha Stanley
Relationship Girlfriend

Suspect 1

Last Name: Unknown
First Name: Unknown Init: Unk.
Race: B Sex: M
Est. Age/DoB: Unknown
Hgt.: Unk. Wgt: Unk. Build: Unk.
Hair: Unk. Eyes: Unk. Comp: [blank]
Hat: [blank] Coat: [blank] Shirt: Unknown
Address: Unknown Pants: Unknown

Suspect 2

Last Name:	Unknown		
First Name:	Unknown	Init:	Unk.
Race: B	Sex: M		
Est. Age/DoB:	Unknown		
Hgt.: Unk.	Wgt: Unk.	Build:	Unk.
Hair: Unk.	Eyes: Unk.	Comp:	[blank]
Hat: [blank]	Coat: [blank]	Shirt:	Unknown
Address:	Unknown	Pants:	Unknown

Witness 1

Last Name:	Willingham		
First Name:	Edward	Init.	P
Race: W	Sex: M	DoB:	04/15/57
Address:	6210 Paseo, Kansas City		
Business:	Unemployed		

NARRATIVE:

On 07/28/2003 at 2310 hours I (Radio 221) was dispatched with P.O. Carletta (Radio 231) to 6206 Paseo on a reported shooting.

Upon arrival I made contact with the victim who gave the following statement. On 07/28/2003 at 2255, the two listed suspects kicked in the back door on the West side of the dispatched address. At this time he confronted the two suspects just inside the door. He further stated that the suspects then shot him twice with a 9MM and fled back out the back door on the west side of the residence.

I then made contact [with] the listed witness who stated the following: on 07/28/2003 at 2255 hours he heard a male voice repeatedly yelling for help.

My investigation revealed the above statements upon arriving I observed the victim covered in an apparent blood like substance. I also observed the backdoor on the West side of the residence which was open upon my arrival and showed no apparent signs of forced entry.

[I] observed a broken basement window on the South side of the residence and another one on the North side.

Sgt. Kilkenny (Radio 230) responded to the scene. Sgt. Rocker from homicide and CST Lane from Crime Scene were notified from the scene. Detective Mauzy (Radio 2342) from robbery and Detective Eikel (Radio 1051) from sex crimes responded to the scene. CST Rezzelle from crime scene responded. The listed victim was transported to Research Medical Center by MAST. an area canvas was conducted with negative results.

/s/ B L Coe, # 5028

July 29, 2003, Willingham Report by Eikel
(Reprinted Digest)

KANSAS CITY, MISSOURI POLICE
DEPARTMENT
INVESTIGATIVE REPORT [CASE DOCUMENT]

Case # 03-070151

Title of Investigation	Subject of Report
Assault (Agg) Richard D. Schiele Jr, B/M, 03/26/73 6206 Paseo Telephone – Unknown Occurrence: 07/28/03 2300 hrs, 6206 Paseo	Interview Paul Edward Willingham, W/M, 04/15/51 6210 Paseo No Telephone

Report By:	Assignment:	Date:	Page 1
Detective Janna Eikel # 3569	Sex Crimes Section	07/29/03	of 1 Pages

On 07/28/03, at approximately 2330 hours, the reporting detective responded to 6206 Paseo on a reported shooting. During the investigation, the reporting detective interviewed Paul Edward Willingham who resided in a residence located on the south side of 6206 Paseo. Mr. Willingham stated that on 7/28/03, at approximately 2300 hours, he was in his bedroom located in the northwest corner of the second floor. He stated that he heard something like a pellet gun being fired. He looked out his bedroom window and observed a black male in the basement at 6206 Paseo. The male was throwing things against the window causing it to break. Mr. Willingham stated that he could not iden-

tify the person. He then heard someone say, "Help me." He went downstairs and looked out the back door. He could see someone in the garage moving around with a flashlight. He yelled "Police Officer" and the subject turned and ran down the driveway towards Paseo. Mr. Willingham stated that the police started showing up in front of the house.

Mr. Willingham stated that he does not know who lives in the house. He related that it used to be a drug house but that a few months ago someone bought the house and started fixing it up. He stated that he observed a black male and a white male staying there. He stated that he would observe them loading up two 4 wheelers, one red and one yellow on a ramp. He stated that he has never seen them go to work. Mr. Willingham described the white male as being about 6 2 , very thin, 20 s, and having lots of tattoos. He stated that the black male looked like a black skinhead. Mr. Willingham stated that he has kept a log of license plates of vehicles that have been parked at the residence.

/s/ Janna Eikel, # 3569

July 29, 2003, Crime Scene Report by Hagen
(Reprinted Digest)

Dispatched to 6206 S. Paseo on a shooting. While en route, a temperature of 75 degrees was noted. Upon arrival, contact was made Det. Mauzy who stated that a Search Warrant had been obtained for the residence and requested that the scene be processed.

Investigation revealed the scene to be a one and one-half story residence located on the west side of Paseo with the front facing east. An east-west driveway extended along the north side of the residence and ended at a detached double stall garage. A 3 0 tall metal fence extended around the south, west, and east (south of the residence) sides of the backyard.

The front entrance consisted of an exterior metal and glass storm door and an interior aluminum clad door with a central glass pane. The storm door was missing the closing mechanism arm. The door was equipped with a double cylinder dead bolt. Blood was observed on the interior door handle of the storm door and on the interior glass panel. The interior door was equipped with a knob lock and a dead bolt. The locks were unlocked and the door and door frame were intact and undamaged. A linoleum floor (approximately 3 0 wide by 3 0 long) was observed just inside the front door. A bloody bare foot print was observed on the floor with the print pointing toward the front yard. The print was photographed with a Nikon Coolpix 5700 digital camera and a measurement card. A gel lift was collected from the print as item #1. Blood smears were observed on the interior door knob of the interior door. A blood sample was collected from the knob as

item #2.

The front door gave access to a northeast living room. The rest of the first floor of the residence consisted of a north central dining room, a north central kitchen (west of the dining room), a northwest rear entryway, a southeast bedroom, a south central bathroom, and a southwest room with a hot tub.

The living room contained an L-shaped couch extending along the south and east walls of the room, an oscillating fan (no front cover) just west of the front door, a central coffee table, a TV in the west wall, and a fireplace in the north wall of the room. A monitor and two cameras were observed on the fireplace mantle. The cameras and monitor were not functioning. It should be noted that the fan was on when the reporting CST arrived at the scene but it was turned off during the investigation. Blood was observed on the north end of the couch just south of the front door, on the linoleum floor, on the base of the fan, on the living room carpet, and on the coffee table. A bloody cordless phone was observed on the coffee table. A bed ruffle was observed on the floor by the couch and an English bulldog puppy was observed on the ruffle. The puppy was coughing and vomiting bile. A family member of the victim responded to the scene and took custody of the dog along with the dog's medication and medical papers. An air vent was observed near the base of the west living room wall in the northwest corner of the room. The cover to the vent was on the floor.

The north central dining room contained a large dog kennel in the east area of the room, dog dishes filled with food and water in the center of the room, a fish

aquarium in the south wall, and a plant stand and comforter in the northwest corner of the room. Dog feces were observed on the floor west of the dog kennel. A baggie containing a green leafy substance was observed on top of the comforter and the baggie was collected as item #3. A hole was observed in the east wall of the dining room (southeast corner). The hole was 2 1 ¾ " above the floor and 0 1 ½ " north of the south dining room wall. The hole was horizontal to the floor and did not appear to be a bullet hole. A second hole was observed in the south dining room wall below the fish aquarium. The hole was 4 3 ½ " east of the west dining room wall and 1 10 above the floor. This hole was also horizontal to the floor and did not appear to be a bullet hole. A corresponding hole was not observed in the cupboards below the aquarium located in the bedroom. Blood spatter was observed on the south dining room wall below the hole and toward the west wall. A blood sample was collected from the wall by the hole as item #4.

A door was located in the west wall of the dining room near the southwest corner of the room. The door gave access to the second floor, which consisted of an empty room in the west area and an open attic in the east area. Clothing was observed scattered on the floor in the west area and on the stairs.

The kitchen consisted of a sink and stove along the north wall, and a refrigerator along the south wall. Bloody bare foot prints and blood drops were observed on the kitchen floor. A blood sample was collected from the floor by the refrigerator as item #5. An unrolled cigar was observed on the countertop east of the stove. A green leafy residue was also observed on the counter

and was collected as item #6. Blood smears were observed on the lower cabinet doors to the east of the stove. A "Rite Weight Digital Pocket Balance" scale was observed in the lower cabinet and was collected as item #7. An "Ohaus CS-2000 digital scale was also collected from the cabinet as item #8. A white residue was observed on both scales.

A doorway in the west kitchen wall gave access to a northeast rear entryway. A door and partial frame were observed propped against the north door frame in the west wall. The remaining door frame and the door itself were intact and it appeared that the door was being installed into the frame.

The back door was located in the west wall of the rear entryway. The aluminum clad door was equipped with a knob lock, a dead bolt, and was open. The locks were unlocked and intact. A small splinter was observed in the wood core however the aluminum portion of the door, the striker plates, the bolts, and the door frame were all intact and undamaged. No forced entry was observed.

A doorway in the south wall of the kitchen gave access to a stairway leading down to the basement. Two (2) bullet holes were observed in the south stairway wall and entered into the southeast bedroom.

The bedroom contained a fish aquarium in the north wall, cupboards below the aquarium, a dresser along the east wall, an east-west extension off of the southeast corner of the bedroom with a small cubby hole in the north wall, two (2) TVs on the floor in the center of the room, and a bed along the west wall. An adjoining bathroom was observed off of the northwest corner of

the bedroom (west wall). The bedding was pulled back. Buckets and aquarium supplies were observed on the floor by the north wall. Clothing and shoes were observed scattered throughout the room. A green leafy residue was observed on the east dresser and was collected as item #9. A baggie containing a green leafy substance was observed on the floor behind the dresser and was collected as item #10. A small closet was located in the east wall behind the dresser. The closet contained the TV that was located in the west living room wall.

A rifle was observed propped against the west wall of the cubby hole resting on its barrel. The weapon was Bushmaster caliber 223-5.56mm model XM15-E25 assault rifle (S#L133995) with a canvass strap. The weapon was collected as item #11. Two (2) magazines, which were taped together with black electrical tape, were observed in the weapon. The magazines were collected as item #12. Forty-four (44) live rounds headstamped "PMC 223 REM" were collected from the magazines as item #13. The safety was on and the chamber was empty. A computer check showed that the weapon did not have a record. The weapon and ammunition were processed for latent prints.

The weapon was resting on a cardboard box containing numerous boxes of ammunition. A suitcase, which contained clothing and shoes, was observed on the floor in front of the cubby hole. The suitcase was emptied, collected as item #14, and used to transport the ammunition. The following ammunition was collected from the cubby hole:

-(item #15) six hundred ninety-six (696) live

rounds headstamped "PMC 223 REM"

-(item #16) fifteen (15) live rounds headstamped "C" (22 caliber long rifle)

-(item #17) ten (10) live rounds headstamped "F" (22 caliber long rifle)

-(item #18) eleven (11) live rounds headstamped "FEDERAL 45 AUTO"

-(item #19) three (3) live shotgun rounds headstamped "REMINGTON PETERS 12GA"

-(item #20) one (1) live shotgun round headstamped "FEDERAL 12GA"

-(item #21) purple Crown Royal bag (which contained the shotgun rounds)

-(item #22) thirty-four (34) boxes of PMC ammunition (containing the 223 caliber ammunition)

-(item #23) one (1) Colt 5.56mm caliber magazine (which contained five (5) 223 caliber live rounds)

A shotgun was located under the mattress of the bed. The weapon was laying on the right side with the barrel pointing south. The safety was on "fire" and a live round was observed in the chamber. The weapon was a Mossberg model 500A 12 gauge pump-action shotgun (S# P465886) (item #24). Two (2) live rounds headstamped "REMINGTON PETERS 12GA" and three (3) live rounds headstamped "FEDERAL 12GA" were collected from the magazine and chamber as items #25-26. A computer check showed that the weapon did not have a record. The weapon was processed for latent prints with negative results. It should be noted that the surface of the weapon was not con-

ducive for prints.

The trajectories from the two (2) bullet holes which entered into the south wall of the stairway leading into the basement exited through the north bedroom wall (northwest corner), through the door leading into the bathroom, and out a window located in the south wall of the bedroom. Hole #1 in the north bedroom wall measured 2 1 ½ " above the floor and 0 5 ¼" east of the west wall. Hole #2 measured 4 1 ½" above the floor and 0 8 east of the west wall. Two (2) possible bullet impact marks were observed in the north wall of the residence located just south of the victim's address. The residence south of the victim's and the yard between the two residences were examined for the spent bullets but met with negative results.

The bathroom contained a sink along the west wall, a toilet along the south wall (southwest corner), and a bathtub along the east wall of the room. The toilet seat and lid were up and the toilet was flushed. A door located in the west wall (northwest corner) gave access to the southwest room with the hot tub. A spent casing headstamped "PMC 45 AUTO" was observed on the floor in the northwest corner of the bathroom and was collected as item #27. No blood was observed in the bathroom or in the room with the hot tub.

A doorway located in the east wall (northeast corner) of the bathroom gave access to the stairs leading to the basement. It should be noted that a piece of carpet was stuck beneath the door and the door was open approximately 1 4 wide.

Further examination of the stairs leading to the basement revealed the fourth step down from the top

was resting on the fifth step leaving a large gap. Blood drops were observed on the steps and on the south railing at the base of the stairs. The basement consisted of a furnace and water heater along the north wall in the east area of the room, an empty storage room in the northeast corner, long boxes (extending north-south) containing hardwood floors in the center of the room, and construction supplies in the southwest corner of the basement. Pooled blood was observed on the floor on the east side of the furnace and a blood sample was collected as item #28. Large amounts of blood drops were observed across the top of the boxes containing the hardwood floors. A blood trail extended into the northeast storage area and then back out. Bloody bare foot prints were observed on the floor south/southeast of the furnace pointing toward the broken window.

A broken window was located in the north wall of the basement (northwest corner). An air-compressor hose was hanging from the window and the nozzle was on the driveway north of the residence. The glass had been completely removed from the window and it appeared that this was old damage and the window was being used to access the exterior north side of the residence. No blood was observed on or near the window.

A broken window was located in the south wall of the basement just above the boxes of hardwood floors. The bottom ledge of the window was 5 6 above the floor and the window was 2 0 wide by 1 3 tall. A glass standard was collected from the window as item #29. Blood was observed on the interior side of the window and on the frame. A blood sample was collected from the frame below the window as item #30. Further examination of the yard outside the broken window re-

vealed glass fragments on the ground and a drop of blood on the cement slab outside the window. A blood sample was collected from the cement as item #31. An air-conditioner unit was located just south of the broken window. A large intact spider web was observed attached to the south wall of the residence and the air-conditioner unit.

Further examination of the driveway and backyard of the victim's residence revealed a vehicle parked in the driveway. The vehicle was a gold color Chevrolet Suburban, 4-door, with license # 041-SPP (MO/04) and VIN-3GNEC16T8YG169492 parked with the front facing west. The hood was cool to the touch. The doors were closed and the windows were up. No blood was observed on the exterior of the vehicle. A trailer was observed in the driveway just west of the vehicle.

A detached double-stall garage was located at the west end of the driveway. The doors to the north stall were open and contained a padlock on a hasp and clasp. The padlock was rusty, unlocked, and undamaged. A large cobweb was attached from the open door to the garage. The north stall contained a lawn mower, trash, and beer and soda cans. The south garage stall contained a boxed Jacuzzi tub in the entryway, an air-conditioner unit (with cut wires and pipes), and a 4-wheeler.

A 30 wire fence surrounded the backyard of the residence just north of the victim's (6204 S. Paseo). A green flashlight with clear tape partially wrapped around it was observed along the fence-line by the victim's driveway just east of the garage. The flashlight was collected as item #32. A swab from the handle of

the flashlight was collected as item #33. The flashlight and its batteries were processed for latent prints.

A gate was observed in the fence lining the north edge of the victim's driveway. The gate was hinged on the east and opened outward toward the north. The fence and gate were covered with plants and vines. The gate was partially open. A black belt was observed on the ground below the gate and was collected as item #34. Laying on the ground just inside the backyard of the residence located at 6204 S. Paseo was a handgun. The weapon was laying on its left side with the barrel pointing south to southeast. The weapon was a Norinco model of the 1911A1, 45-caliber semi-automatic handgun (S#514342) with a magazine (item #35). The hammer was cocked. A slide was closed however a casing headstamped "A-MERC 45 AUTO" was collected from the chamber as item #36. Five (5) live rounds headstamped "A-MERC 45 AUTO" and two (2) live rounds headstamped "PMC 45 AUTO" were collected from the magazine as items #37-38 (see attached gun diagram). The weapon and ammunition were processed for latent prints. A computer check showed that the weapon did not have a record.

It should be noted that no forced entry was observed on any of the doors in the residence. The scene was photographed with a Nikon Coolpix 5700 digital camera and the discs were forwarded to the Kansas City, Missouri Police Crime Laboratory. The scene was processed for latent prints and the fingerprint cards were forwarded to FID. Items #1-38 were placed in the CSIS Property Room.

/s/CST Deborah Hagen #14138

July 31, 2003, Lab Report and Notes by Jansen
(Reprinted Digest)

Report of Findings
CRIME LABORATORY
Kansas City Missouri Police Department
6633 Troost Ave
Kansas City, MO 64131
(816) 349-3200 Fax (816) 349-3240

Victim: Richard Schiele
Offense: Aggravated Assault
Case # 03070151
Report # 1
Date: 07/31/03
Reported by: /s/ Danielle L. Jansen 7/31/03
Danielle L. Jansen, Senior Criminalist

Description Of Evidence

The following item(s) were recovered by Crime Scene Technician Deborah L. Hagen Crime Scene Investigation Section from 6206 S. Paseo (Ja) on 07/29/03 and submitted as Lab Page #3 On 07/30/03.

Item #

3 – 3 The item was a plastic bag with green leafy substance. The leafy material, weighing 55.76 grams, contained Marijuana, a Schedule I controlled substance.

3 – 6 The item was green leafy substance. The leafy material, weighing 0.55 grams, contained Marijuana, a Schedule I controlled substance.

3 – 7 The item was a "rite weight" scale with white residue. The residue contained Cocaine, a Schedule II controlled substance.

3 – 8 The item was an Ohaus scale with a tiny amount of residue. The item was not analyzed.

3 – 9 The item was a green leafy substance. The leafy material, weighing 0.09 grams, contained Marijuana, a Schedule I controlled substance.

3 – 10 The item was a plastic bag with green leafy substance. The leafy material, weighing 1.80 grams, contained Marijuana, a Schedule I controlled substance.

ADDITIONAL COMMENTS

Confirmation of items 3-3, 3-6, 3-9 and 3-10 was made using low-power microscopy and the modified Duquenois – Levine color test. Confirmation of item 3 – 7 was made using Gas Chromatography/Mass Spectrometry (GC/MS).

July 29, 2003, Montgomery Report by Hiner
(Reprinted Digest)

Kansas City, Missouri Police Department
Report Form

Date of Occurrence: 07/29/2003
Time of Occurrence: 0700
Location Occurrence: 6200 Paseo

Crime

Offense: Progression to Assault (AGG)

Subject 1

Last Name: Montgomery
First Name: Ted Init: E.
Race: W Sex: M
Est. Age/DoB: 4-22-43
Hgt.: 6 01 Wgt: 175 Build: Med.
Hair: Gray Eyes: Blue Comp: Light
Hat: [blank] Coat: [blank] Shirt: Gray
Address: 6200 Paseo Pants: Blue
Business: Unemployed

NARRATIVE:

On 07-29-03 at 0700 hrs, while conducting an area canvas in the area of 62nd & Paseo in regards to CRN# 03-0701051, contact was made with Subject #1.

He stated that he had seen listed victim #1 from the above CRN and his roommate at or in front of 1318 East 62nd St. multiple times talking and "conducting business." Subject #1 also stated that he believed 1318 E. 62nd to be involved with [illegible] in some way or another.

/s/ Hiner, # 4839

July 29, 2003, Jason the Roommate
Report by Teague
(Reprinted Digest)

Kansas City, Missouri Police Department
Report Form

Date of Occurrence: 07/29/2003
Time of Occurrence: 1217
Location Occurrence: 6151 Paseo

Crime

Offense: Progressive Investigation Assault AGG

Subject 1

Last Name: Spillman
First Name: Glenn Init: [blank]
Race: W Sex: M
Est. Age/DoB: 12-28-36
Hgt.: [blank] Wgt: [blank] Build: [blank]
Hair: [blank] Eyes: [blank] Comp: [blank]
Hat: [blank] Coat: [blank] Shirt: [blank]
Address: 6151 Paseo Pants: [blank]
Business: Self-employed

Vehicle

Color: Yellow/White Make: [blank]
Model: [blank] Style: ATV

NARRATIVE:

On 07-29-03 at 1217 hours, I was dispatched to 6151 Paseo in regard to a suspicious party in the areas.

I made contact with subject #1, the resident, Mr. Spillman stated that at about 1200 hours he had observed the "suspect of the assault" that had occurred at

6206 Paseo (Crn 03070151) go to the rear of 6206 Paseo and drive away on a yellow and white ATV. He stated it appeared the "suspect" drove to 1318 E. 62nd Street, stayed for a short time then drove W/B on 62[nd] Terr[ace] from Paseo. He stated the party was wearing a yellow and white matching helmet.

At about 1415 hours near Swope and Flora. I was waved down by subject #2 while driving E/B on Swope Pky. Mr. Pennington stated that at about 1350 hours he was stopped near the intersection of Volker & Troost when a white male drove a yellow and white ARV out of Brush [C]reek and a silver and black pistol dropped out of his pants onto the street. He stated the male stopped and picked the pistol up and put it in his pants. He stated he last saw the party driving E/B on 49th street from Troost. He described the party as a white male tall and thin wearing a white tank top, black shorts and a white and yellow helmet.

I notified the dispatcher to put out on an all call for a party armed.

The Homicide Unit was notified by telephone by Sgt. Finn (Radio 220)

/s/ P.O. Timothy J. Teague, # 3146

July 29, 2003, Jason the Roommate
Report by Finn
(Reprinted Digest)

Kansas City, Missouri Police Department
Report Form

Date of Occurrence: 07/29/2003
Time of Occurrence: 1500
Location Occurrence: 6206 Paseo

Crime

Offense: Progressive Investigation
Aggravated Assault

Subject 1

Last Name: Lancaster
First Name: Jason Init: W.
Race: W Sex: M
Est. Age/DoB: 1-7-78
Hgt.: 6 7 Wgt: 215 Build: Med.
Hair: Brn. Eyes: Brn. Comp: [blank]
Hat: [blank] Coat: [blank]
Shirt: White Tank Pants: Black shorts
Address: 6206 Paseo
Business: Self-employed

Vehicle

Color: Yellow/White Make: Polaris]
Model: 250 Style: ATV
License: None

NARRATIVE:

On 7-29-2003, at approximately 0800 hours, at 1880 E. 63rd St. I spoke to Sgt. Niemeier of the homicide

unit regarding the aggravated assault/shooting that occurred on 7-28-2003 at 6206 Paseo at approximately 2305 hours. Sgt. Niemeier stated that the suspect in the shooting was possibly the white male who resided with the victim at 6206 Paseo.

On 7-29-2003, at 1217 hours, P.O. Teague and P.O. Reist were dispatched to 6151 Paseo. The caller told the officers that the white male "suspect" in the shooting at 6206 Paseo, had been at 6206 Paseo and he rode away on a white and yellow all terrain vehicle (ATV) and he was wearing a white and yellow helmet. See progressive inv. by P.O. Teague for further information. I responded on the call with the officers.

On 7-29-2003, at approximately 1415 hours, P.O. Teague was contacted by a subject who stated he observed a W/M riding a white and yellow ATV near Volker and Troost. The subject observed the W/M drop a pistol, stop, pick up the pistol and put it back in his waistband. The W/M then rode away on the ATV. The subject stated that the W/M was wearing a white and yellow helmet, white tank top and black shorts. P.O. Teague had the dispatcher broadcast the above information. After the broadcast, I overheard another officer advise that he observed the same ATV and rider southbound on Paseo at 55th St. However he turned around to go after him and was unable to locate it again.

On 7-29-2003, at approximately 1500 hours, I observed a white and yellow Polaris ATV (listed on front) parked in the driveway at 6206 Paseo. The ATV was parked behind a goldish brown SUV. At approximately 1503 hours, I observed a W/M, later identified as sub-

ject #1, get on the ATV and put on a white and yellow helmet. The W/M rolled the ATV backwards out of the driveway at 6206 Paseo, then headed South on the sidewalk. The W/M turned West on the North sidewalk of 62nd Ter. from Paseo. I activated my overhead lights and the W/M stopped the ATV on the sidewalk and removed his helmet. As I exited my vehicle, the W/M yelled that he was going to the hospital. I told the W/M to get off the ATV and to place his hands on the stone wall at that location. The W/M did not comply and again stated that he was going to the hospital. Fearing that he was still armed with the previously described pistol, I drew my weapon, pointed it at him and again ordered him to get off the ATV. The W/M then accelerated West on the sidewalk, putting his helmet back on while driving. I reentered my police vehicle and observed the W/M suspect go North on Virginia, then East on 60th Street. The W/M suspect jumped the curb and crossed the center parkway across Paseo. I was unable to follow, however he was observed and followed by other officers who had responded to the area. I regained sight of the W/M suspect as he drove East across the grass park between North bound Paseo and Blue Hills, just South of 58th St. The suspect then drove across the front yards and driveways of the houses at 5815 and 5817 Paseo, then South on Blue Hills and East on 59th Street. Other officers followed the suspect from that point until the police helicopter R-690 advised he had the suspect in sight and the officers backed off. The suspect drove around the area of 50th St. to 61st St., Paseo to Prospect. R-690 observed the suspect commit numerous violations and he relayed the information to ground officers. The suspect eventually got off the ATV on the West side of

Southbound 71 Hwy at approximately 57th Street. R-690 observed the suspect run East across the highway and R-690 advised at one point that the suspect was attempting to "car jack" a passing motorist. The suspect continued to run East and was taken into custody in the area of 57th St. and Chestnut. I responded to that location and positively identified the suspect (subject #1 on Page #1) as the same W/M I stopped on the white and yellow ATV at 62nd Ter. and Paseo. (See progressive investigation /investigation arrest report by P.O. Stokes). It should be noted that on 7-29-2003, at 1520 hours, P.O.'s Kincaid and Haynes, radio #221 were dispatched to 5817 Paseo in regard to a pistol in the driveway. (See progressive investigation by P.O. Kincaid). I responded to that location and observed a black and silver pistol in the driveway. The pistol was laying directly in the path that I observed the suspect drive across the driveway at that location.

/s/ Sgt. Terence R. Finn, # 3115

July 29, 2003, Jason the Roommate
Report by CST VanRyn
(Reprinted Digest)

Kansas City, Missouri Police Department
Crime Scene Report

Upon arrival contacted P.O. Kincaid who stated that officers had apprehended a suspect wanted for an aggravated assault that occurred on 07-28-2003 at 6206 Paseo Boulevard. The suspect, who was riding a four-wheeled, all-terrain vehicle, was originally spotted in the area of 62nd & Paseo. The suspect was subsequently apprehended in the area of 71 Highway & 57th Street. P.O. Kincaid stated that while the suspect was fleeing from officers, he apparently dropped a handgun in the driveway of a residence. P.O. Kincaid requested that the handgun be collected.

My investigation revealed the scene to be a single-family residence located on the east side of the street, facing west. An east/west, concrete driveway extended west from the northwest corner of the residence. Lying near the center of the driveway was a SMITH & WESSON Model SW 9V semi-auto handgun [ITEM 1]. The weapon was lying on the right side. The barrel was pointed toward the southeast. The "Safety" switch was off. The chamber was empty. The weapon contained a magazine [ITEM 2]. Removed from the magazine were six live rounds, head stamped 'CBC 9mm LUGER' [ITEM 3].

Photographs of the scene were taken with a Nikon digital camera. The memory card was forwarded to the Kansas City Police Crime Laboratory.

Items one through three were forwarded to the Kansas City Police Crime Laboratory.

Prior to forwarding, the handgun, magazine and live rounds were processed for latent fingerprints. One card of prints [ITEM 4] was collected from the magazine and forwarded to F.I.D.

/s/ CST. Greg VanRyn #13129

Respondent Lanpher's Deposition
(Reprinted Digest)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

TERRANCE MORRIS, et al.,
Plaintiffs,
vs. Case No. 4:05-CV-W-0362-FJG

JARRETT LANPHER, et al.,
Defendants.

DEPOSITION OF JARRETT LANPHER, a Defendant, taken on behalf of the Plaintiffs, pursuant to Agreement, on the 10th day of October, 2006, at the Missouri Attorney General's Office, 3100 Broadway, Suite 109, Kansas City, Missouri, before:

SHERRI L. CAIN, CCR #649,

of Hostetler & Associates, a Certified Court Reporter of the State of Missouri.

APPEARANCES

Appearing for the Plaintiffs was:

MR. PAUL MATTHEW TANCREDI, 5309 Woodland, Kansas City, Missouri 64110.

Appearing for the Defendants was

MR. MATTHEW BRIESACHER of MISSOURI ATTORNEY GENERAL'S OFFICE, PO Box 899, Jefferson City, Missouri 65102.

*[3:1-15:25]-- **Lanpher Dep.**, 3:1-15:25 not cited by Parties.

[**Lanpher Dep.**, 16:all-28:all; 21:13-22:7, and 28:1-29:4] cited by Family at:
App. 57a, ¶7; App. 58a, ¶¶8 &10; and App. 68a, ¶54.

[16:1-4] **A.** Because I don't keep my notes. I take my notes, write my report, and the notes get thrown away. Whatever I took on notes is in that report.

[16:5-8] **Q.** (by Mr. Tancredi) So if the typewritten report doesn't have anything about questions about physical description of the assailants, would you agree that means that you didn't ask?

[16:9] **A.** If that's what my report reads, yes.

[16:10-12] **Q.** And if it doesn't have any information about what clothing the assailants were wearing, would that mean that you didn't ask?

[16:13-14] **A.** If it's not in the report, I did not put it in there -- I mean, I didn't ask, yes.

[16:15-16] **Q.** Did you ask any questions about what the lighting was like when this occurred?

[16:17] **A.** No.

[16:18-22] **Q.** Do you think that the level of lighting would be important in understanding the reliability of the victim's statements about what he saw?

[16:22-23] **A.** That's not a question that's commonly asked, no.

[16:24-17:2] **Q**. If an assault occurs at approximately 2300 hours, approximately 11:00 p.m., the policy of the Kansas City Police Department is not to ask about what the lighting was like?

[17:3-4] **A**. There is no policy on how we interview people.

[17:5-6] **Q**. What kind of training do you receive on investigating crimes?

[17:7-9] **A**. Numerous classes and schools. I couldn't begin to tell you how many I've been to and which ones.

[17:10-11] **Q**. Do you remember what particular classes you found useful?

[17:12] **A**. All of them.

[17:13-15] **Q**. Do you refer to any particular text or training materials when trying to figure out what questions to ask during an investigation?

[17:16-17] **A**. I use a combination of everything that I've been taught.

[17:18] **Q**. Can you name any of those materials?

[17:19] **A**. The different types of interviewing?

[17:20-25] **Q**. Well, some of the training materials that you think are some good sources of information on what questions you ought to ask during an investigation. Do you remember any of the training materials in particular that you could --

[18:1-3] **A**. They've been basically schools by professors, other detectives, groups of people that put on classes and everything.

[18:4-8] **Q**. And in that training did you ever receive any information about getting physical descriptions if you have a surviving witness, surviving shooting victim, physical descriptions of the assailants?

[18:9] **A**. As far as height, weight, and all that?

[18:10] **Q**. Yes.

[18:11-12] **A**. We get -- that usually is taken by the reporting officer.

[18:13] **Q**. Who was the reporting officer?

[18:14-15] **A**. On this case it'd be -- I believe it says Coe.

[18:16-18] **Q**. You mean the officers who initially responded to the scene would be the only ones that asked?

[18:19-22] **A**. I didn't say that. I said in this case it was that way. If I ask someone, "Who did this to you," and they tell you who did it, "Give me a name."

[18:23-24] **Q**. Is that what you're saying happened in this case?

[18:25] **A**. I'm not saying anything like that.

[19:1-2] **Q**. Do you remember why you got a search warrant for the Morris home?

[19:3] **A**. He told me who did it.

[19:4-5] **Q**. And what questions did you ask that led him to tell you who did it?

[19:6] **A**. I'd have to look at the report.

[19:7-8] **Q**. Do you remember how long the interview -- how long the interview was?

[19:9] **A**. No, I do not.

[19:10-11] **Q**. Do you remember visiting the shooting victim at the hospital?

[19:12] **A**. Yes, I do.

[19:13-14] **Q**. Do you remember what kind of state he was in as far as answering questions?

[19:15] **A**. Competent.

[19:16-17] **Q**. Do you remember how many questions you asked him?

[19:18] **A**. No.

[19:19-20] **Q**. Do you remember what questions you asked him?

[19:21-23] **A**. Whatever questions are in the report. I don't type down question one, answer, question two, answer.

[19:24-25] (Deposition Exhibit 9 was marked for identification.)

[20:1-4] **Q**. (By Mr. Tancredi) I'm handing you what's been marked Deposition Exhibit 9 and Bates stamped Morris 40, 41, 42, 43. Can you identify that document?

[20:5-6] **A**. It'd be my report of the victim's interview.

[20:7-8] MR. BRIESACHER: Look at all the pages.

[20:9] **A**. As well as a photograph lineup.

[20:10-13] **Q**. (By Mr. Tancredi) And would you agree that -- did you state previously that every question you would have asked him would be included in this report?

[20:14-17] **A**. No, I did not say that I wrote the questions I asked him down in the report. I said what we talked about, discussed, and the information I obtained from him is in this report.

[20:18-19] **Q**. Do you see any information in there about physical description of the assailants?

[20:20] **A**. No.

[20:21-22] **Q**. You didn't ask him for a physical description?

[20:23-24] **A**. I asked him if he knew anyone who would have done this. He immediately talked.

[20:25-21:6] **Q**. And so your contention that he immediately said this 20 hours after the shooting, but you didn't get any information about a 911 call of him saying anyone in particular and you didn't get any information from the officers that responded to him at the scene of him identifying anyone in particular?

[21:7-12] **A**. Officers at the scene usually can't get enough information from a victim who's been shot because we cannot sit there and delay MAST from taking that person to a hospital, so we have to take what they can give us. Is it always true, is it always complete? No.

[21:13-15] **Q**. Okay. If he said he knew who did that, why isn't that in the first paragraph of this report?

[21:16-20] **A**. Because I wrote this report the way I talked to him. When I first contacted him, I asked him what happened. He told me what happened. Why would it have to be in the first paragraph?

[21:21-23] **Q**. You don't believe that if someone knew who shot him, if you asked him what happened, he'd say such-and-such shot me?

[21:24-25] **A**. I didn't ask him that. I asked him what happened –

[22-1] **Q**. So you don't believe that someone can answer what happened when they're shot with an answer, "I got shot by him"?

[22:4-5] **A**. I believe anybody can answer the way they want to.

[22:6-7] **Q**. And he didn't want to tell you who shot him?

[22:8-9] MR. BRIESACHER: I'm going to object. It calls for speculation.

[22:10-13] **Q**. (By Mr. Tancredi) What was the exact question you asked him when he supposedly identified Terrance and Ricardo Morris as the people that attacked him?

[22:14-19] **A**. The victim was asked if he knew anyone who would have done this. He stated that Jason had something -- that he believed Jason had something to do with it and the two dudes

that Jason hangs out with. He knew those two dudes by the names Dink and Mont.

[22:20-22] **Q.** And did you have any information about Jason visiting the victim at the hospital that day?

[22:23] **A.** I don't recall.

[22:24-23:1] **Q.** Did you participate in the interview of Jason that occurred at the police station before your interview of the shooting victim?

[23: 2-3] **A.** I didn't see what day Jason was interviewed on, so I can't answer that right now.

[23:4-5] **Q.** You don't remember if you spoke to Jason before you spoke to the shooting victim?

[23:6] **A.** At this point in time, no, I don't.

[23:7-8] **Q.** I have what's been previously marked Deposition Exhibit 7. Please review that, please.

[23:9] **A.** It'd be a report that I wrote.

[23:10-11] MR. BRIESACHER: Do you have a question about the report, Paul?

[23:12-13] MR. TANCREDI: Is he done reviewing it?

[23:14-15] **A.** You asked me if I recognize it. I said it's a report that I wrote.

[23:16-17] **Q.** (By Mr. Tancredi) Okay. Did you read the information in the report?

[23:18] **A.** Yes.

[23:19-22] **Q.** That report's been redacted. From the information, unredacted information, can you

identify who the interview subject would have been?

[23:23] **A.** It says, I believe, Jason Lancaster.

[23:24] **Q.** And is that an interview you conducted?

[23:25] **A.** Yes.

[24:1-2] **Q.** And where did you conduct this interview?

[24:3] **A.** Headquarters.

[24:4-5] **Q.** And what time did you conduct the interview?

[24:6] **A.** 2150 hours on 7/29.

[24:7-8] **Q.** And when did you receive a report that he'd been arrested?

[24: 9] **A.** I don't know.

[24:10-11] **Q.** Does it say anywhere in the report that he visited the victim in the hospital?

[24:12] **A.** Yes.

[24:13-15] **Q.** Did you come to any conclusions as to whether or not he had visited the victim at the hospital?

[24:16-17] **A.** From what he told me, he said he visited the victim at the hospital, yes.

[24:18-19] **Q.** Did you ever ask the victim or the victim's family if Jason visited at the hospital?

[24:20] **A.** No.

[24:21-23] **Q**. Based on the information that Lancaster gave you, he said he visited the hospital before you interviewed the victim; is that correct?

[24:24-25] **A**. Can you repeat the question? I didn't understand what you just said.

[25:1-2] **Q**. How many times did you interview the gunshot victim?

[25:3] **A**. I believe once. Twice.

[25:4-7] **Q**. If this interview of Jason Lancaster occurred at 2050 on 7/29, that means the second interview of the gunshot victim was after this interview of Jason Lancaster; is that correct?

[25:8-10] **A**. It'd be on page 41, the second date that I contacted the victim at the hospital on 7/30/2003.

[25:11-12] **Q**. So did you ask the victim if he'd been visited the day before by Jason Lancaster?

[25:13-14] **A**. On which time, the second interview or the first interview?

[25:15] **Q**. Either interview.

[25:16-18] **A**. The first interview came prior. So neither interview did I ask him if he'd been visited, no.

[25:19-21] **Q**. After Jason Lancaster reported that, you didn't think that that was something you needed to ask the shooting victim?

[25:22] **A**. No.

[25:23-25] **Q.** So your theory of the crime was that Jason Lancaster had something to do with his roommate's attempted murder?

[26:1] **A.** That was not my theory.

[26:2] **Q.** What was your theory?

[26:3-4] **A.** I don't make theories. I go with the information that I have.

[26:5-6] **Q.** And you had information that Jason said he visited him; is that correct?

[26:7] **A.** He visited the victim?

[26:8] **Q.** Yes.

[26:9] **A.** Yes.

[26:10-14] **Q.** And when you get information from one source, you don't have any need or anything to corroborate or attempt to corroborate with other people that would have to have been there if this information is true?

[26:15-20] MR. BRIESACHER: I'm going to object that the question is vague. I mean, are you talking just generally does he verify like somebody's name, if they say a name, does he find a friend to verify that; or are you talking a specific fact?

[26:21-22] MR. TANCREDI: Well, he said he goes on his information. I mean --

[26:23-25] MR. BRIESACHER: I'm just asking you to clarify the question. I'm not trying to argue with you.

[27:1-3] **Q**. (By Mr. Tancredi) Do you try to attempt to corroborate information from more than one person?

[27:4] **A**. Yes.

[27:5-6] **Q**. Why didn't you try to corroborate that in this case?

[27:7-8] **A**. As far as corroborate what, that Jason was at the hospital?

[27:9] **Q**. Yes.

[27:10-12] **A**. He said he was at the hospital. Him going to the hospital didn't have much to do with the actual shooting.

[27:13-14] **Q**. Well, what were you trying to figure out?

[27:15] **A**. When?

[27:16-17] **Q**. Being a lead detective for this criminal investigation.

[27:18] **A**. What took place.

[27:19] **Q**. And what did you figure out?

[27:20] **A**. At that point in time?

[27:21] **Q**. Yes, at that point in time.

[27:22-25] MR. BRIESACHER: And just so we're clear, Paul, are we still talking about whether or not the roommate went to the hospital, or are we talking big picture?

[28:1] MR. TANCREDI: The big picture.

[28:2] MR. BRIESACHER: Okay.

[28:3-7] **A.** The information I obtained from the victim was that he believed two people were involved of it. I put together a photo lineup. He identified those -- one of them people as being the shooter.

[28:8-14] **Q.** (By Mr. Tancredi) He said that that's the face of the person that shot him that he saw that night; and the conditions -- you don't know what the lighting conditions were, you don't know what the physical descriptions of the victims were. Do you remember what specific question you asked him?

[28:15] **A.** For which part?

[28:16-17] **Q.** What exact question did you ask the victim when you presented this photo lineup?

[28:18-20] **A.** He was given the lineup, asked if he recognizes anybody in this lineup as the person that may be involved in this incident.

[28:21-22] **Q.** Did you ask him, "Is that what the guy that shot you that night looked like?"

[28:23-29:1] MR. BRIESACHER: I'm going to object. Asked and answered. I think he just told you what he asked. If you have something different, you can amend your previous --

[29:2-3] MR. TANCREDI: He can say no as his answer. He can say he didn't ask that.

[29:4] **A.** He stated the suspect -- he identified

*[29:5-33:13]-**Lanpher Dep.**, 29:5-33:13 not cited by Parties.

[**Lanpher Dep.**, 33:14-38:16] cited by Family at: App. 70a-71a, ¶¶59-60.

[**Lanpher Dep.**, 36:8-11] cited by Lanpher at: App. 86a, ¶53.

[*Italics* indicate jointly cited deposition testimony]

[33:14-16] **Q**. (By Mr. Tancredi) Would you consider someone who's 6 feet tall, 160 pounds to be either short or stocky?

[33:17] **A**. Six foot tall to be short?

[33:18] **Q**. Uh-huh.

[33:19-20] **A**. I guess that would be asking me personally or...

[33:21-23] **Q**. Do you think that anybody would identify somebody that was 6 foot tall and 160 pounds as either short or stocky?

[33:24-34:1] MR. BRIESACHER: I'm going to object. That calls for speculation. But you can answer the question if you have an opinion.

[34:2] **A**. No.

[34:3-4] (Deposition Exhibits 10 and 11 were marked for identification.)

[34:5-7] **Q**. (By Mr. Tancredi) Handing you what's marked Deposition Exhibit 11. Do you recognize that document?

[34:8] **A**. Yes.

[34:9] **Q**. Is there a time on that document?

[34:10] **A.** 1350.

[34:11-12] **Q.** And can you identify what that document is?

[34:13] **A.** Wanted/cancellation notice.

[34:14-15] **Q.** So this one that was issued at 1350, was that a wanted notice or a cancellation notice?

[34:16] **A.** It was a pickup order.

[34:17-18] **Q.** And who was the subject of the pickup order?

[34:19] **A.** Ricardo Morris.

[34:20] **Q.** And did you complete this pickup order?

[34:21-22] **A.** I don't recall. Doesn't look like my writing, but that doesn't mean that...

[34:23-25] **Q.** On the last block it says, "Detective Lanpher of the assault squad. Person to contact, Detective Lanpher."

[35:1-2] **A.** Yes. But that doesn't mean that I wrote it.

[35:3] **Q.** Who would have wrote it?

[35:4] **A.** Fellow detective, someone assisting me.

[35:5] **Q.** Did you receive a copy of it?

[35:6] **A.** Yes.

[35:7] **Q.** When did you receive a copy of it?

[35:8-9] **A.** A copy's made right after it's done, put in the case file.

[35:10-11] **Q.** So would it have been around 1350 on the 30th?

[35:12] **A.** Yes.

[35:13-14] **Q.** And do you see a height and weight on that document?

[35:15] **A.** Yes.

[35:16-17] **Q.** And what is the height and weight described on that document?

[35:18] **A.** Six foot, 160.

[35:19-20] **Q.** Did you have any other information regarding the height and weight of Ricardo Morris?

[35:21] **A.** No.

[35:22-25] **Q.** So the extent of your information that you had before executing the search warrant was that Ricardo Morris was 6 foot tall and 160 pounds?

[36:1] **A.** Alert record, yes.

[36:2-5] **Q.** And the only physical description you had attributed to the gunshot victim was two assailants, one of them was a short person and the other one was a stocky person; is that correct?

[36:6-7] **A.** That's what it says, yes. That's what's on the alert record, yes.

*[36:8-10] **Q.** Did you ever run any criminal background reports for Terrance Morris or Ricardo-Morris?*

[36:11-12] ***A.*** *No. I ran their alert record.* Whatever comes in on their alert record.

[36:13-14] **Q.** Is there a copy of the alert record made part of the investigative file?

[36:15] **A.** No, I don't believe so.

[36:16-17] **Q.** Do you remember what you learned from the alert record?

[36:18] **A.** As far as what?

[36:19] **Q.** Why would you do an alert record?

[36:20-22] **A.** To get information on a subject, address, height, weight, see if they have any warrants.

[36:23] **Q.** Do you remember what you found out?

[36:24] **A.** No, I do not.

[36:25-37:1] **Q.** Did you find any history of violent crime?

[37:2] **A.** That's really not a consideration.

[37:3-6] **Q.** So the policy of the Kansas City Police Department in the violent crimes investigative division is that person's criminal history is not relevant in a violent crimes investigation?

[37:7-10] **A.** Whether a person is -- has a violent-criminal history or has no criminal history whatsoever does not play into whether that person is a suspect or that person is not.

[37:11] **Q.** Then why do you run the alert report?

[37:12-15] **A.** Not for a criminal history. Warrants, the information on the subject, to see if

they're 1031, armed and dangerous. Just because they're not or are doesn't mean...

[37:16-19] **Q.** And did you just state a policy of the Kansas City Police Department when you say that a person's criminal history isn't a part of a criminal investigation?

[37:20] **A.** No. You stated it as a policy.

[37:21-23] **Q.** Is the person's criminal history relevant to whether or not they're likely to have committed a crime?

[37:24-25] **A.** It's used for informational, but it's not evidence.

[38:1-3] **Q.** So he could have named anybody whose name he had heard of, and you would have been sending the tactical team to that person's house?

[38:4-5] **A.** I believed he didn't name any person. He picked somebody out of a lineup.

[38:6-7] **Q.** What was the question asked when he picked him out of the lineup?

[38:8-11] MR. BRIESACHER: Objection. We've asked this a couple of times already. If he's got a new answer, he can give you a new answer. But I think he's already testified to this.

[38:12-13] MR. TANCREDI: Could you just refresh what the answer was?

[38:14-15] MR. BRIESACHER: I believe he read from the report to you.

[38:16] MR. TANCREDI: Oh, okay.

*[38:17-40:1]--**Lanpher Dep.**, 38:17-40:1 not cited by Parties.

[**Lanpher Dep.**, 40:2-40:25] cited by Family at: App. 74a, ¶90.

[40:2-3] **Q.** (By Mr. Tancredi) Did you ever figure out who shot him?

[40:4] **A.** No.

[40:5-7] **Q.** After the search warrant was executed on the Morris home, what did you do to try to figure it out?

[40:8-9] **A.** The victim was requested to come in and give a formal statement to --

[40:10-11] **Q.** How long was the victim in the hospital?

[40:12] **A.** I don't recall.

[40:13-15] **Q.** Did you ever go to the victim in the hospital after this, after the execution of the search warrant?

[40:16-18] **A.** I don't know the date of the search warrant, so I don't believe so. If I did, there would have been a report.

[40:19-21] **Q.** So you didn't go back to the victim and tell him that Ricardo Morris and Terrance Morris didn't have anything to do with him being shot?

[40:22-25] MR. BRIESACHER: I'm going to object. I think he just testified that if he did, there

would have been a report. Why don't you show him a report that says that.

*[41:1-51:6]--**Lanpher Dep.**, 41:1-51:6 not cited by Parties.

[**Lanpher Dep.**, 51:7-53:6] cited by Family at: App. 74a, ¶90.

[51:7-9] **Q.** (by Mr. Tancredi) I believe your previous testimony was that you didn't go back to talk to the victim at the hospital. Is that correct?

[51:10] 10 **A.** When?

[51:11-13] **Q.** After the search warrant execution or within -- you know, while the person was still at the hospital.

[51:14-16] **A.** I believe in my report it says that I advised the victim to contact me as soon as he was released from the hospital.

[51:17-18] **Q.** Okay. So you went back and you told him to contact you?

[51:19-20] **A.** To come down and respond for a formal statement.

[51:21-24] **Q.** So during that, do you believe that you also told him that the result of the search warrant -- or the result of the search exonerating Terrance and Ricardo?

[51:25-52:1] **A.** No. If I told him that, it would have been in my report.

[52:2-10] **Q.** Don't you think that subjects the Morris family to unnecessary danger -- if this guy has all

these weapons or if he has some kind of belief or something of them being involved in him being attacked at his house, you don't think that a person with this kind of stuff found in his house shouldn't be told, "Hey, these people that you named didn't have anything to do with what happened"?

[52:11-14] MR. BRIESACHER: I'm going to object to the form of that question. I think it's vague. If the witness understood the question, go ahead and answer it.

[52:15] **A.** No, I didn't understand it.

[52:16-19] **Q.** (By Mr. Tancredi) Does not telling the shooting victim that the Morrises were quickly exonerated of the crime, does that endanger the Morris family?

[52:20-21] **A.** I believe it was -- Ricardo was quickly exonerated.

[52:22-23] **Q.** And you didn't tell the shooting victim then?

[52:24] **A.** I don't recall if I did or not.

[52:25-53:3] **Q.** And then the shooting victim was the person that has assault rifles and hundreds of rounds of ammunition in his house, shotguns, and other handguns in his house?

[53:4] **A.** Are you asking me if he has that?

[53:5] **Q.** Yes, uh-huh.

[53:6] **A.** He had it at the time, yes.

*[53:7-61:14]--**Lanpher Dep.**, 53:7-61:14 not cited by Parties.

*[61:15-67:5]-- [**Lanpher Dep.**, 61:15-97:16] cited by Family at: App. 71a, ¶61, but this Appendix does not include **[Lanpher Dep.**, 61:15-67:5]; and it only includes:

[Lanpher Dep., 67:6-73:10; and 86:4-89:23]

[**Lanpher Dep.**, 72:16-21] cited by Lanpher at: App. 86a, ¶49.

[*Italics* indicate jointly cited deposition testimony]

[67:6-8] **Q.** (by Mr. Tancredi) Deposition Exhibit 3. Is this the affidavit that you swore to in seeking the search warrant?

[67:9] **A.** Yes.

[67:10-11] **Q.** In this affidavit you identify the Morris home --

[67:12] **A.** Yes.

[67:13-15] **Q.** -- as being white in color with brown trim, the numbers 1318 clearly visible on the house?

[67:16] **A.** Yes.

[67:17-20] **Q.** Turning to Deposition Exhibit 9. Can you read the second sentence in the third paragraph? And this was the statement taken of the shooting victim.

[67:21-23] **A.** "Stated his name was Jason and that he hung out with some dudes around the corner on East 62nd in a red brick house."

[67:24-68:2] **Q.** Was the shooting victim identifying a red brick house as the possible place where he thought people lived or that, you know, that he thought the Morris brothers lived?

[68:3] **A.** No.

[68:4] **Q.** What was he saying in that paragraph?

[68:5-7] **A.** It says that -- from that sentence, Jason hung out with some dudes around the corner on East 62nd in a red brick house.

[68:8-11] **Q.** And what red brick did you think that he was referring to -- what do you think he was referring to when he said he was referring to someone in a red brick house?

[68:12-13] **A.** That he hung out with someone at a red brick house.

[68:14-16] **Q.** And was he talking about dudes that Jason hung out with as if he suspected the dudes Jason hung out with for shooting him?

[68:17-18] **A.** If that would have been the case, I would have wrote that.

[68:19-21] **Q.** So you don't think this statement has anything to do with your investigation, the red brick house?

[68:22-69:1] **A.** I didn't say that. You keep saying if the red brick house is related to Terrance and Ricardo -- is that what you're saying? I don't understand your question, if that's not what you're asking me.

[69:2-3] **Q.** Can you read the last paragraph on that page:

[69:4-13] **A.** "Victim was asked if he knew anyone who would have done this. He immediately thought that Jason had something to do with the attack and that the two dudes he hangs out with were the ones who did the actual attack. He stated he knew the two dudes went by Dink and Mont. He stated he did not know them personally but knew Jason went to their house all the time around the corner. The victim was asked if he would be able to identify the subject who attacked him, and he stated yes."

[69:14-15] **Q.** So are those the same two dudes referred to in the third paragraph?

[69:16-18] **A.** I don't know. He doesn't refer to dude or dudes. He refers to them down there as Dink and Mont.

[69:19-24] **Q.** Isn't there an identification that he hung out with some dudes and that the dudes he hangs out with were the ones -- you don't think they're talking about the same people? You don't think he's talking about the same people in both of those statements?

[69:25-70:1] **A.** Could be, it could not be. That'd be speculation.

[70:2-4] **Q.** What conclusion did you draw when you were writing this report and you were interviewing him?

[70:5-6] **A.** That the two dudes he believed might be involved are Dink and Mont.

[70:7-8] **Q.** And what about two dudes in a red brick house?

[70:9-12] MR. BRIESACHER: I'm going to object. I think it mischaracterizes the document. I think it said in front of a red brick house, not in a red brick house.

[70:13-14] MR. TANCREDI: It doesn't say in front.

[70:15-16] MR. BRIESACHER: Oh, I'm sorry then. I withdraw my objection then. Sorry, Paul.

[70:17-20] **Q.** (By Mr. Tancredi) Did it ever occur to you that the shooting victim thought he was talking about Terrance and Ricardo when he talked about a red brick house?

[70:21-22] **A.** We didn't know Terrance and Ricardo by name at that point in time.

[70:23-71:1] **Q.** Do you think when he was talking about two dudes that the two dudes referenced in the last paragraph are the same two dudes referenced in the third paragraph?

[71:2] **A.** Possibility.

[71:3-6] **Q.** Do you think that you shouldn't clarify something like that before getting a search warrant and getting a tactical team to enter someone's home?

[71:7-8] **A.** I got the search warrant on the house where he lived.

[71:9-12] **Q.** And you ignored the information regarding the red brick house even though in your

affidavit you identify the Morris home as not being a red brick house; is that correct?

[71:13-15] **A.** I wasn't getting a search warrant for a red brick house. Terrance and them did not live -- they lived at this house.

[71:16-18] **Q.** So in seeking your search warrant you made no mention of the fact that the victim identified a red brick house?

[71:19-20] **A.** In regards to the suspects? He did not say the suspects lived in a red brick house.

[71:21-22] **Q.** In your search warrant affidavit you didn't make any mention of a red brick house?

[71:23] **A.** No.

[71:24-72:2] **Q.** Okay. Well, the shooting victim referenced two dudes living in a red brick house, two dudes he hung out with -- or his friend hung out with.

[72:3] **A.** What was the question you wanted?

[72:4-9] **Q.** Do you believe that clarifying the description of a house is a proper procedure that a person seeking an affidavit for a search warrant should do before deciding to get a search warrant and asking a tactical entry team to execute that search warrant?

[72:10] **A.** I don't understand your question.

[72:11-12] MR. TANCREDI: Could you read back the question, please?

[72:13-14] (The pending question was read by the reporter.)

[72:15] **A.** Yes.

[72:16-19] ***Q.*** *(By Mr. Tancredi) Did you try to clarify that description with the conflicting --did you try to clarify the description of a red brick house with the actual Morris house?*

[72:20-21] ***A.*** *No. Because the victim never told me the suspects lived in a certain house.*

[72:22-25] **Q.** So upon reviewing that document, you believed that the two dudes mentioned in Paragraph 3 aren't the same two dudes mentioned in the last paragraph on that page, Morris 40?

[73:1-2] MR. BRIESACHER: I'm going to object. I think this has been asked and answered.

[73:3-4] MR. TANCREDI: I don't know if he clearly said that they're different people or...

[73:5-8] MR. BRIESACHER: I don't want to put words in his mouth. But I believe he's already testified that he didn't know. But I guess we'll let him clarify.

[73:9-10] **A.** I said I don't know. Dudes are dudes. Everybody's a dude to some people.

*[73:11-86:3]-- **[Lanpher Dep.**, 61:15-97:16] cited by Family at: App. 71a, ¶61, but this Appendix does not include **[Lanpher Dep.**, 73:11-86:3].

[Lanpher Dep., 86:4-89:23]

[86:4-6] **Q.** (By Mr. Tancredi) When you swore this affidavit, did you believe every sentence in it to be true?

[86:7] **A.** Yes.

[86:8] **Q.** Do you still believe that?

[86:9-10] **A.** Do I still believe what I put in there to be true? Yes.

[86:11-16] **Q.** Did you put down the discrepancy between Mr. Montgomery's claiming that the victim and suspects -- that the victim spent time at the suspects' house and the fact that the victim didn't immediately identify the persons who shot him?

[86:17] **A.** No.

[86:18-19] **Q.** Did you put down anything about a red brick house?

[86:20] **A.** No.

[86:21-24] **Q.** Did you write the first paragraph as if everything learned in that paragraph was learned before the neighbor, Mr. Willingham, was interviewed?

[86:25] **A.** No.

[87:1-4] **Q.** Is there anything in that first paragraph that separates what was learned at the scene from what you learned later, the next nightin your interview with the shooting victim?

[87:5] **A.** No.

[87:6-7] **Q.** Does your second paragraph begin with, "The neighbor was then contacted"?

[87:8] **A.** Yes.

[87:9-10] **Q.** Would you agree that when you put "then" in a sentence, that that references time?

[87:11] **A.** No.

[87:12] **Q.** Why is "then" in that sentence?

[87:13-14] **A.** Because he was contacted by the officers after they arrived.

[87:15-16] **Q.** So you just stated that sentence without using the word "then"?

[87:17] **A.** Excuse me?

[87:18-20] MR. TANCREDI: Can you read back the last question and answer regarding why was "then" in the statement?

[87:21-22] (The record was read by the reporter as follows:)

[87:23-24] "QUESTION: Why is 'then' in that sentence?

[87:25-88:1] "ANSWER: Because he was contacted by the officers after they arrived."

[88: 2-5] **Q.** (By Mr. Tancredi) And did you previously state that "then" doesn't have anything to do with when things happen or when the neighbor was contacted?

[88:6-7] **A.** You asked me if it refers to time frames. I said no.

[88:8-9] **Q.** Does "then" need to be in that sentence to convey the information it's conveying?

[88:10] **A.** Some could say yes, some could say no.

[88:11-12] **Q.** So if it's read by the prosecutor or the judge, they can interpret it to indicate time?

[88:13-14] **A.** Do you want me to ask how they interpreted it -- answer how they interpreted it?

[88:15-16] **Q.** You said it could be either one, right, or --

[88:17-18] **A.** Well, you're asking me how they interpreted it. I can't answer that.

[88:19-20] **Q.** What's the purpose of filing an affidavit/application for a search warrant?

[88:21] **A.** To get the search warrant.

[88:22-23] **Q.** So it's an attempt to convince a judge to issue a search warrant; is that correct?

[88:24-25] **A.** It's not an attempt. It's a document that states the facts to the judge.

[89:1] **Q.** And what's your goal?

[89:2] **A.** Every time or this time?

[89:3-4] **Q.** When you're filing an affidavit for a search warrant.

[89:5-6] **A.** To present the facts the way I know them.

[89:7-8] **Q.** Did you know that the victim stated a red brick house?

[89:9-10] **A.** As the suspect's house? No, he did not state a red brick house to be the suspects' house.

[89:11-14] **Q.** Did you know that the victim didn't state at the scene of the shooting that the suspects

could have been two guys that his friend hung out with on 62nd Street?

[89:15] **A.** Can you repeat that one?

[89:16-18] **Q.** Did you know that he didn't identify anyone by name as a suspect that night, at the scene of the shooting?

[89:19] **A.** Yes.

[89:20] MR. BRIESACHER: Paul, can we take a real quick break?

[89:22] MR. TANCREDI: Sure.

[89-23] (A recess was taken.)

*[89-24-97:16]-- **[Lanpher Dep.**, 61:15-97:16] cited by Family at: App. 71a, ¶61, but this Appendix does not include **[Lanpher Dep.**, 89-24-97:16]

*[97:17-111:7]-- **Lanpher Dep.**, 97:17-111:7 not cited by Parties.

[Lanpher Dep., 111:8-113:5] cited by Family at: App. 74a, ¶90.

[111:8-9] **Q.** Do you know how long he was in the hospital?

[111:10] **A.** No, I do not.

[111:11-12] **Q.** Do you know when you saw him again at the hospital?

[111:13] **A.** Compared to what?

[111:14-17] **Q.** Well, the search warrant was on the -- was it on the 30th? Do you know about how

many days it was after that, or was it the next day or...

[111:18-19] **A.** I believe it was -- I told him to notify me when he's released.

[111:20-21] **Q.** Do you know about what time that was, what day that was?

[111:22] **A.** That he was released?

[111:23-24] **Q.** No. The day that you went back to the hospital.

[111:25-112:1] **A.** I believe that was told to him on the 30th, as my report says.

[112:2-5] **Q.** Oh, so after the search warrant was executed -- you released Terrance and Ricardo the night of the 30th, right, or 9:00 or 10:00 on the 30th?

[112:6] **A.** Whatever time it says.

[112:7-8] **Q.** And you went out to the hospital that late to talk to the shooting victim?

[112:9] **A.** No, I never said that.

[112:10] **Q.** Okay. I'm -- what did you say?

[112:11-15] **A.** You asked when did I tell him to come back. I told you on the 30th. As I said here in my report, the victim was advised to contact the detective when he was released from the hospital to provide a formal statement.

[112:16-20] **Q.** Okay. So you saw him the morning before the search warrant was done, you got the -- you did the photo lineup, you told him come down

and give a formal statement, and was that the last time you talked to him?

[112:21-23] MR. BRIESACHER: I'm going to object that I think it takes it out of – it misstates the testimony. I'll say that.

[112:24-113:1] MR. TANCREDI: I'm only trying to understand the testimony. I'm not trying to misstate it.

[113:2-4] **Q.** (By Mr. Tancredi) Do you know the -- the last time that you saw the shooting victim, was that before the search warrant execution?

[113:5] **A.** To the best of my knowledge, yes.

*[113:5-End]--**Lanpher Dep.**, 113:5-End not cited by Parties.

CERTIFICATE

Sherri L. Cain
Certified Court Reporter #649
Supreme Court of Missouri

Lanpher's July 29, 2003, "No Description? Well, Then Give Me a Name! and I'll Bring You His Picture Report
(Reprinted Digest)

KANSAS CITY, MISSOURI POLICE DEPARTMENT
INVESTIGATIVE REPORT [CASE DOCUMENT]

Title of Investigation		Subject of Report	
Assault (Agg) Richard D. Schiele (Sanders), BM, 3-26-1973 6206 Paseo Occurrence: 7-28-2003 @ 2300 hrs, 6206 Paseo		Victim Interview	
Report By: Det. Jarrett Lanpher #4131	Assignment: Homicide Unit	Date: 7-30-2003	Page 1 of 1 Pages

On 7-29-2003, at 1919 hours, the reporting detective responded to research Medical Center and contacted the listed victim. The victim was in the Intensive Care Unit but was in stable condition and was able to be interviewed.

The victim stated he had just got home from going to the store when he heard something in the backyard. He stated he went to the kitchen and observed two black males, both armed with handguns, near the back door. He stated he began to wrestle with one of the subjects and during the struggle the suspect shot him. He stated the second suspect also began to shot at him

as well. The victim stated he then ran to the basement and began to throw stuff at his windows in an attempt to alert the neighbor for help. He stated while in the basement he was hiding behind the furnace and one of the suspects stuck their head in the window and stated, "I don't want to kill you." He stated he just continued to throw stuff at the windows and hiding behind different objects in his basement. He stated after a few minutes everything was quiet so he went back upstairs to get help by calling the police. He stated he then went to the front porch and waited. He stated he was shot several times throughout his body.

The victim was asked if anyone lived with him and he stated that he had a guy who was living with him who helped him with the remodeling of houses. He stated his name was Jason and that he hung out with some dudes around the corner on east 62nd in a brick house. He stated that Jason called an hour before this occurred from his cell phone and told me he was coming over. He stated that Jason did not have a key to the house to his knowledge and that was why he was calling to see if I was home so he could get in the house. The victim was asked about any four wheel ATV's and he stated that he had two, a red and a yellow one. He stated the red one was broken in the garage and the yellow one Jason drove all the time.

When asked about any weapons in the house he stated he had a shotgun under his bed and a black and silver Smith and Wesson 9MM handgun that he kept behind the TV. The victim was asked about an assault rifle that was found in the house and he stated he knew nothing about any assault rifle.

The victim was asked if he knew anyone who would have done this he immediately thought that Jason had something to do with the attack and that the two dudes he hangs with where the ones who did the actual attack. He stated he knew the two dudes went by "Dink" and "Mont". He stated he did not know them personally but knew Jason went to their house all the time around the corner. The victim was asked if he would be able to identify the subjects who attacked him and he stated, "Yes."

Morris – 40

On 7-30-2003, at 1020 hours, the reporting detective responded back to Research medical center with a photo line-up consisting of six black males all similar in appearance. The line-up included Ricardo Morris, BM, 6-24-1979 in the number six spot. Information was obtained that Morris went by the nickname of "Dink". The victim viewed the line-up and identified Morris as one of the suspect's who shot him. He then initialed and dated the back of the photograph.

The victim was asked if he knew why anyone would want to attack him in this manner and he stated "No." He stated that all he does is buy and fix up house and then sales them. He stated he had no clue why anyone would do this. The victim was advised to contact the detective when he was released from the hospital to provide a formal statement.

Morris – 41

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Ricardo Morris
f/m 6-24-79

JL 72903

RDS

7-30-80

Lanpher's July 29, 2003, Jason the Hospital Visiting Suspected Mastermind on a 4-Wheeled Motor Scooter Report
(Reprinted Digest)

KANSAS CITY, MISSOURI POLICE DEPARTMENT
INVESTIGATIVE REPORT [CASE DOCUMENT]

Title of Investigation		Subject of Report	
Assault (Agg) Richard D. Schiele (Sanders), BM, 3-26-1973 6206 Paseo Occurrence: 7-28-2003 @ 2300 hrs, 6206 Paseo		Interview [Jason Lancaster]	
Report By: Det. Jarrett Lanpher #4131	Assignment: Homicide Unit	Date: 7-30-2003	Page 1 of 2 Pages

On 7-29-2003, at 2150 hours, the reporting detective signed out [Jason Lancaster] from the police Detention Unit. [Jason] lives with the victim and had not been seen or heard from since the shooting occurred. He was being held on felony eluding and Felon in Possession in regard to the above captioned case.

[Jason] read his Miranda Rights aloud, using Form 340 P.D., which he stated he understood and signed the form. [Jason] stated he met the victim a few years ago while remodeling houses and they have been friends since then. He stated in March of 2003, he was released from the St. Joseph Prison and moved in with

the victim to help him with remodeling houses. [Jason] stated that his room was upstairs, but it was not finished yet so he only had clothes up there and in the Jacuzzi room. He stated he slept on the couch in the living room when he was there or he would sleep at his girlfriend's house. He stated his girlfriend lives at 5715 Park.

[Jason] was asked if there were any weapons in the house and he first stated "Not that he knew." Later in the interview he stated that he knew of two weapons in the house. One was a silver and grey 9MM handgun in which he had taken into his possession while he was cleaning the house after the above captioned incident occurred. He stated that he took this weapon from on top of the T.V. that was built into the wall. He stated that he was going to take this gun to a friend of his to keep safe, but he refused to tell the reporting detective the name of the friend. He would only state that his friend was a black male. [Jason] stated that he had this gun in his front pocket earlier in the day when he was riding his yellow and white ATV (All Terrain Vehicle). He stated he was riding near Brush Creek when he jumped a hill and when he landed the gun fell out of his pocket on the ground. He stated he stopped and put the gun back into his front pocket and continued to ride his ATV. [Jason] stated that he had the gun in his pocket when the police pulled him over that is why he fled from them on his ATV. He stated that during the chase, the gun again fell out of his pocket, in a driveway that he drove across during the chase. [Jason] was then asked if he knew of any other weapons in the house and he stated that he knew of one other and that was an AR-15 that was kept under the victim's

bed. He was asked if he had ever touched this weapon and he stated that he had picked it up several times just to look at it, but he had never used it. [Jason] was asked whom the gun belongs to and he stated that the gun belonged to the victim.

[Jason] was then asked about the shooting of the victim and where he was at when this occurred. He stated that he worked on his house at 5734 Olive most of the day and then went over to a house on 54th and Michigan to help his friend, Roberto Veal, (Ph#564-0620), work on his house. He stated he was there until dark and then went to his girlfriend's house. He stated he spent the night there and found out about the shooting the next morning when his girlfriend's brother James called his cell phone and asked him if he had seen the News. He stated that James told him that his boy Richard got shot. was there until dark and then went to his girlfriend's house. He stated he spent the night there and found out about the shooting the next morning when his girlfriend's brother James called his cell phone and asked him if he had seen the News. He stated that James told him that his boy Richard got shot. [Jason] stated that he then went to the house (6206 Paseo) and found all the rubber gloves laying the front yard, blood on the porch, and broken windows to the basement. He stated that while he was there he received a phone call from the victim's sister who told him that the victim was at Research Hospital. [Jason] stated he then rode his ATV to the hospital to talk to Richard. He stated that the Richard told him two black dudes shot him, one of them was stocky and the other a short dude. He stated that Richard also told him that he believed that it might have been the two dudes who

live in the 2nd house on the north side of 62nd Street. [Jason] was then asked if he knew whom they were and he stated he only knew the dudes as "Dink" and "Mont". [Jason] was then asked if he knew why this occurred and he stated that Richard had told him that the dudes asked him for the money. [Jason] stated he did not know why anyone would do this. He was then asked if he knew of any other people after Richard and he stated that Richard was having problems with some dude he only knew as "Fuzzy" but he did not know who he was or what he looked like.

[Jason] was then asked what he did after the hospital and he stated that he stayed and talked for a little while with Richard, his mother and Richard's babies mother Alicia. He stated Richard then asked him to go check on the house and Alicia gave him a key because his was over at the house on Olive. He stated he then went back to the house and began to clean the house. He stated that later that day he had left to go ride like he stated earlier when he dropped the gun, and when he returned Richard's sister and another girlfriend of Richard's were there washing off the front porch. [Jason] was then asked if he had called Richard the night before and he stated that Richard had called him around 2200 hours to tell him to come and get the dog because he was leaving and he did not want the dog to shit all over the house. He stated that he never went over to get the dog. He was then asked if he had called the victim and he stated that he had to see what he was doing.

[Jason] was then asked why neighbors would be saying that they observed him going up to the house he had described as belong to the possible shooters earlier in

the day. He stated that he did go up there before he went to the hospital to see if they had seen anything, but no one was home. [Jason] was asked several times if he had any involvement in the above captioned case and he denied knowing who or what occurred. He stated that Richard was his friend and he would do anything for him.

[Jason] was then shown a photo Line-up consisting of six black males all similar in appearance, which included a photograph of Ricardo Morris, BM, 6-24-1979 in the number six position. Morris resides at 1318 E 62nd Street, which was identified by neighbors as the residence that [Jason] had visited on his ATV earlier in the day. [Jason] identified Morris as the subject knew as "Dink". He then initialed and dated the back of the photograph.

[Jason] refused to provide the reporting detective a formal statement and he was returned to the Detention Unit at 2400 hours.

August 27, 2003, Alert Record
Checks of the Family
(Reprinted Digest w/ Explanation[1])

For Official Use Only Within the Criminal Justice System 08/27/03 1140
Alert/ 9384673
Morris Rosalind D BF 07/20/1959 509 204 Bk Br

[The alert record for Rosalind Morris covers a period of 8/27/03 to the earliest entry of 6/23/91 and indicates:
(0) arrests.
(3) 2003 Housing Code violations with $50 fines each.
(1) 2003 Traffic violation (speeding) with $85 fine.
(1) 2002 Traffic violation (speeding) with $57 fine.]

For Official Use Only Within the Criminal Justice System 08/27/03 1141
Alert/ 3006275
Morris Terrance L BM 03/11/1981 601 175 Bk Br

[The alert record for Terrance Morris covers a period of 8/27/03 to the earliest entry of 11/12/98 and indicates:
(1) 7/30/03 arrest for the aggravated assault investigation that is the subject of this lawsuit and he was released the same date.
(1) 2000 Traffic violation (careless driving) with $100 fine and 2 years traffic probation.]

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1. Explanations based on CODE OF ORDINANCES, KANSAS CITY, MISSOURI §§70-131, 70-135, 70-137, 70-270, 70-301, 70-362(2), AND 70-363(C) (1995).

For Official Use Only Within the Criminal Justice System 08/27/03 1142
Alert/ 3006275
Morris Ricardo A BM 06/24/1979 600 170 Bk Br

[The alert record for Ricardo Morris covers a period of 8/27/03 to the earliest entry of 10/10/99 and indicates:

(1) 1/25/03 arrest for driving with a suspended license.

(3) 2003 Traffic violations for the 1/25/03 traffic stop (expired tags) with $25 fine; (not carrying proof of insurance) with $37 fine; and (not producing license on demand) with $150 fine and 2 years traffic probation.

(1) 2000 Traffic violation (careless driving) with no fine and 180 days traffic probation.]

The Family's *Franks* Corrected Affidavit/Application for Search Warrant

(With Explanations regards Materiality)

In drafting this Corrected Affidavit/Application for Search Warrant.

* **1.** Numbered Sentences are those originally included by Lanpher, and numbered by their location in the original.

* **A.** Lettered Sentences are proposed by the Family as contributing to the totality of the circumstances as required by *Illinois v. Gates*, and supportable by the evidence after all predicate facts available from the evidence at summary judgment are conceded as undisputed or determined by drawing inferences in favor of the non-moving parties; the Family.

The lettered fact sentences essentially represent the *Franks* omissions and state information that Lanpher learned during the investigation but did not disclose to the warrant judge. The judges in Middle America ruled that *all* of the information that Lanpher withheld from the judge was "immaterial, not supported by the record, or merely conclusions or attorney argument." App. 6a; and App. 22a.

The Family addresses the judges in Middle America's criticism of evidentiary support by citing the evidence in the record. Reader, Please check and you will see that the record, and, a Rule 56 review of the record, supports every claimed edit and omission. Regards the criticism of materiality, the Family explains in this Corrected Affidavit why each added

lettered fact makes particularized suspicion or particularized exoneration of Terrance and Ricardo more or less likely. *The Family presents these explanations in italicized typeface.*

Regarding the judges in Middle America's criticism of conclusions and argument, the Family simply states that the judges in Middle America are wrong to badmouth inferential reasoning and inferential argument at Rule 56 summary judgment. The judges in Middle America stated false law because inferential reasoning and inferential argument are not only permitted at Rule 56 summary judgment, they are required.

* ~~Strikethrough~~ is used for sentences replaced because the same information is otherwise stated; or, for sentences or phrases if the original wording is not supportable as undisputed facts after all predicate facts available from the evidence at summary judgment are determined by drawing inferences in favor of the non-moving parties; the Family.

* The Family recommends the Reader first read the Fact sentences, which are in plain type, as if he/she is the warrant judge presented this search warrant affidavit/application. The Reader should determine whether he/she would issue/not issue the warrant. The Family contends that the Reader should conclude that the "totality of the circumstances" only adds up to bare suspicion and not probable cause and that the warrant should not issue.

* The Family recommends the Reader then read the italicized explanations of materiality and check

the record citations to confirm the evidentiary support for the claimed edits and omissions.

* Facts relevant to *Biggers* and *Telfaire* factors are material to the probable cause determination because they diminish the reliability and therefore the weight of the eyewitness photo lineup identification. The diminished weight of the photo lineup identification of Ricardo diminishes particularized suspicion of Ricardo and Terrance because the only thing it meant was that [Richard] recognized Ricardo's face as the neighbor about whom he had bare suspicion. As a whole, the evidence establishes that [Richard] never saw his attackers' faces.

* Facts are intended to be set forth chronologically according to the time they came within the knowledge of Lanpher, based on its addition to the case file. **[*Lanpher did not tell, but should have told, the warrant judge the learned Facts relevant to suspicion/probable cause in their proper chronology because an inaccurate chronology is material in establishing* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification.*]**

I, Det. Jarrett Lanpher, affiant and applicant herein, being duly sworn, appear now before the undersigned Judge authorized to issue warrants in criminal cases and makes this Affidavit and Application in support of the issuance of a Search Warrant, to search the following described person place or thing:

1318 E. 62nd Street, Kansas City, Jackson County, Missouri, a single family dwelling, white in color with brown trim and the numbers 1318 clearly visible on the house. The house is located on the north side of 62nd Street.

And there to search for and seize, photograph or copy, and make return thereof, according to law, the following property or things:

Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights

Affiant and applicant being duly sworn deposes and states that he has Probable Cause to believe that the above listed property to be searched and seized, photographed or copied, is now located upon said described person place or thing based upon the following facts, to-wit: (and additional sheet(s) if needed)

1. On 7-28-2003, at 2300 hours, members of the Kansas City, Missouri, Police Department were dispatched to 6206 Paseo in regard to a shooting. [no change, App. 94a.]

2. Officers located [Richard] suffering from gunshot wounds. [no change, App. 94a.]

A. [Richard] was conscious and able to speak to KCPD Officer Coe. [added, App. 93a-94a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact A because it is material in helping to explain when [Richard] provided information and that is relevant to* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification.*]**

3. [Richard] stated that two black males confronted him in his kitchen armed with handguns. [no change, App. 94a.]

B. [Richard] stated that he was shot twice "with a 9 MM." [added, App. 94a] **[*Lanpher did not tell, but should have told, the warrant judge Fact B because it is material in suggesting that [Richard's] opportunity to see his attackers' faces was diminished by the time that [Richard] spent looking at the gun to make sure that it was not pointing at him and that is relevant to* Biggers factors 1 & 2 *and* Telfaire factors A & B, *identified at* Pet. 13 and App. 43a, *that suggest an unreliable eyewitness identification. Fact B is also relevant to establishing the first ingredient in Lanpher's* Kansas City Style *photo lineup recipe, that [Richard] never saw his attacker's faces during the attack because he was looking at the gun during the struggle.*]**

C. [Richard] was not able to give any description of the assailants physical characteristics, clothing, or headgear other than two black males. [added, App. 93a-94a] **[*Lanpher did not tell, but should have told, the warrant judge Fact C because it is material in indicating that [Richard] did not see his attackers well enough to provide the information. That is relevant to* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification. Fact C is also relevant to establishing Lanpher's* Kansas City Style *photo lineup ingredient, that [Richard] never saw his attacker's faces during the attack because he was not able to describe them.*]**

D. [Richard] did not name anyone as his attackers or possible attackers at the scene. [added, App. 93a-94a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact D because it is material in indicating that [Richard] could not have seen the attackers' faces if the attackers were, or, if [Richard] thought they were, persons whose names and faces he knew before the attack. That is relevant to* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, C, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification. Fact D is also relevant to establishing Lanpher's* Kansas City Style *photo lineup ingredient, that [Richard] never saw his attacker's faces during the attack. because any later naming of someone with a familiar face who lived nearby as a possible attacker establishes that [Richard] knows that he did not see the faces.*]**

E. [Richard] was transported by MAST to Research Medical Center. [added, App. 95a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact E because it is material in correcting the false impression that Lanpher created in the original warrant affidavit that [Richard] gave all of the information attributed to him in a single interview prior to the interview of the neighbor [Willingham] immediately after the shooting.*]**

11. A neighbor [Willingham] was then contacted and he stated that he heard noises from the basement of [Richard's] house when he looked outside he observed [Richard] in the basement hurt yelling for help. [No change, App. 96a-97a.]

12. [Willingham] stated he then saw someone with a flashlight in the garage of [Richard's] house. [No change, App. 97a.]

13. [Willingham] stated he yelled, "Police don't move," and the suspect ran down the driveway towards Paseo. [No change, App. 97a.]

F. [Willingham] stated that the house used to be a drug house, "but that a few months ago someone bought the house and started fixing it up." [added, App. 97a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact F because it is material in corroborating Facts J & K below to indicate that [Richard] has chosen to be a criminal who might have many enemies and who would not be as reliable a truth-teller as a law-abiding shooting victim would be.*]**

G. [Willingham] said that a black male and a white male lived there and they never went to work, but they did load up "two 4-wheelers on a ramp." [added, App. 97a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact G because it is material in informing other facts learned during the investigation.*]**

H. [Willingham] never mentioned 1318 East 62nd St., the object of this application, or its occupants, Ricardo or Terrance Morris, the subjects of this application. [added, App. 96a-97a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact H because it is material in correcting the false impression that Lanpher created in the original warrant when he stated in strikethrough Fact 17 below that several neighbors stated that [Jason] hung out at the*

Family's home. Montgomery was the only neighbor who said that, see Fact L below.]**

14. During the crime scene investigation a flashlight, still on, and a handgun were located in and near the driveway, north of [Richard's] house leading from the garage. [No change, App. 106a-107a.]

15. The gun was located on the other side of the fence as if someone may have jumped the north fence running north towards 62nd Street. [No change, App. 106a-107a.]

I. The KCPD got a search warrant for [Richard's] house signed by a Jackson County Judge at 2:39 AM, on July, 29, 2003. [added, App. 61a, App. 86a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact I because it is material in informing other facts learned during the investigation.*]**

J. The KCPD officers discovered in [Richard's] house, a Mossberg 12-gauge pump action shotgun, under his bed, with the safety set on "fire" and a live shell in the chamber, and four other shells loaded. Officers also found a Bushmaster AR-15 semi-automatic assault rifle loaded with two full magazines; more than 700 rounds for the AR-15; and live shotgun shells; and 22-caliber long rifle ammunition and a magazine for a Colt 5.56 mm handgun. [added, App. 102a-104a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact J because it is material in indicating, along with Fact K below, that [Richard] expected danger because of his chosen criminality. That is important in many ways, first, it opens up the class of potential suspects beyond the occupants of the nearest house were two black males*

live, and, it provides possible motives that would make much more sense than Lanpher's theory that the heavily armed drug dealer's errand-running roommate on a 4-wheeled motor scooter has convinced his law-abiding tall and slim basketball acquaintances to become short and stocky murder attempters. Second, it indicates that [Richard] might not be a reliable truth-teller witness into his own shooting investigation because he might know or suspect who did it and he might prefer to seek revenge on his own. Urban drug dealers do not want their peers to consider them to be "snitches," and they might prefer to settle their own scores than to cooperate with the police. Fact J is also material because it indicates that the attackers surprised [Richard] and attacked him so quickly in the kitchen that he was not able to retrieve his weapons and resist the attack. If the attack was that sudden, then it was, most likely, too sudden for [Richard] to see his attackers' faces. That is relevant to Biggers factors 1, & 2 *and* Telfaire factors A, B, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification. Fact J is also relevant to establishing Lanpher's* Kansas City Style *photo lineup ingredient, that [Richard] never saw his attacker's faces during the attack because the attack was so sudden and violent.*]**

K. In [Richard's] kitchen, officers found: an Ohaus CS-2000 digital gram scale with white residue; a Rite Weight digital pocket balance with a white residue; two plastic bags containing a green leafy substance; and residual amounts of the same on a kitchen counter and the bedroom dresser, an un-

rolled cigar was also on the same kitchen countertop, and that indicated that [Richard] was making a marijuana cigar when he was attacked. [added, App. 100a-102a.; App. 108a-109a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact K because it is material for many of the same reasons as Fact J above. [Richard] expected danger because of his chosen criminality. [Richard] had many potential enemies. [Richard] is not a reliable truth teller and he does not want to be known as a "snitch." Fact K is also material because it indicates that the attackers surprised [Richard] while he was in the kitchen preoccupied with rolling up his marijuana cigar. Considering that [Richard] was getting ready to smoke dope, he probably smoked dope soon before and his ability to accurately perceive his attackers' faces during a sudden attack would be affected by his prior dope-smoking. That is relevant to* Biggers factors 1, & 2 *and* Telfaire factors A, B, D, E & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification.*]**

L. On July 29, 2003, at 7:00 AM, KCPD Officer Hiner interviewed neighbor [Montgomery] who lived at 6200 Paseo. [Montgomery] did not see anything the night of the shooting, but said that he had seen the "victim" and his roommate at or in front of 1318 E. 62nd Street "multiple times talking and conducting business" This indicates that [Richard] may have met the subjects of this warrant application prior to the shooting [added, App. 110a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact L because it is material in that if Fact L is believed, it means that [Richard] would have been able to name*

Ricardo and Terrance as his attackers to Officer Coe at the scene if [Richard] had seen the faces of his attackers and he thought they looked like Ricardo and Terrance. That is relevant to Telfaire factor C, *identified at* Pet. 13 and App. 42a, *that suggests an unreliable eyewitness identification. The same applies to [Richard's] failure to name Ricardo and Terrance as his attackers when Lanpher asked, "What happened?" in Fact S below. Lanpher must have believed Montgomery because he relied on Fact L to make the false impression that Lanpher created when he stated in strikethrough Fact 17 below that several neighbors stated that [Jason] hung out at the Family's home. Montgomery was the only neighbor to make that false claim. Fact L is also relevant to establishing Lanpher's* Kansas City Style *photo lineup ingredient, that [Richard] never saw his attacker's faces during the attack. because any later naming of someone with a familiar face who lived nearby as a possible attacker establishes that [Richard] knows that he did not see the faces.*]**

M. [Montgomery] believed 1318 E. 62nd Street to be "involved with [illegible] in some way or another." [Montgomery] did not identify the occupants of 1318 E. 62nd Street by name or nickname. [added, App. 110a.] **[*Fact M is material because it represents that the Family drafted a complete and fair proposed* Franks *Corrected Affidavit for the judges in Middle America. Would that the judges in Middle America had read it and ruled upon it properly. Fact M is more helpful to Lanpher than the Family but the Family included it, no matter that Montgomery is a reclusive neighbor who never bothered to meet the*

Families that moved into the neighborhood in the last 20 years. Montgomery does not know the good from the wicked among his newer neighbors, but he did state a false fact to Officer Hiner, so the Family included the false fact in the Corrected Affidavit because it contributes to the "totality of the circumstances" known to Lanpher.]**

N. Later on July 29, 2003, at 12:17 PM, KCPD Officer Teague responded to a call from [Spillman] a neighbor who reported that he had seen [Jason], the "suspect" riding a yellow and white four wheel all-terrain vehicle, ("yellow ATV") in the driveway of [Richard's] home and, that it appeared he drove to 1318 E. 62nd Street, stayed briefly, and then drove away. [Spillman] did not identify the occupants of 1318 E. 62nd Street by name or nickname. [added, App. 111a-112a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact N because it is material in introducing [Jason] and his strange adventures as the Hospital Visiting Suspected Mastermind on a 4-Wheeled Motor Scooter. Lanpher was, understandably, embarrassed to tell the warrant judge about [Jason's] adventures and Lanpher's improbable theory of the crime. Not understandably, the judges in Middle America stated that they would have concocted the same theory that Lanpher came up with, and, that they would use [Jason] for possibly* inculpatory *facts, but hide, from the warrant judge, any* exculpatory *facts that [Jason] discloses because he is a so-called "suspect," even though he is a 6 7 tall skinny white fellow and the shooters were one short and one stocky black fellows. The judges in Middle America also stated it okay to hide, from the*

warrant judge, [Jason's] status *as an errand running "suspect" who visits his wounded friend [Richard] and [Richard's] family at the hospital. Apparently, that* status *as a suspect was material enough to be* the only reason *[Jason]* ***corroborates****, in the mind of the judges in Middle America, the* ***inculpatory*** *but* ***matters not*** *for the* ***exculpatory****. Every exculpatory fact that [Jason] provided to Lanpher, regards Terrance and Ricardo, that Lanpher did not disclose to the warrant judge, ultimately proved to be exactly true. Finally, The judges in Middle America also stated it okay to hide, from the warrant judge, the entire magnificent theory of the crime that Lanpher figured upon that the heavily armed drug dealer's errand-running roommate convinced his law-abiding tall and slim basketball acquaintances to become short and stocky murder attempters* . App. 6a-7a; App. 12a, fn. 5; App. 14a-15a, fn. 9; App. 22a-23a. *How could it be okay to not tell the warrant judge those things? Fact N is also material because it corrects the false impression that Lanpher created in the original warrant when he stated in strikethrough Fact 17 below that several neighbors stated that [Jason] hung out at the Family's home. Montgomery was the only neighbor who said that, see Fact L above. Spillman only stated that he believed he saw a brief stop, only long enough for a knock on a door as stated in LL below.*]**

O. Later on July 29, 2003, at 2:15 PM, a concerned motorist reported seeing [Jason] ride a yellow ATV out of Brush Creek, drop a black and silver pistol onto the street, and then pick up the gun and speed away. Police notified the dispatcher to "put out an all

call for a party armed." [added, App. 111a-112a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact O because it is material in further describing [Jason] and his strange adventures as the Hospital Visiting Suspected Mastermind on a 4-Wheeled Motor Scooter; and Lanpher's understandable, but unconstitutional, embarrassment to tell the warrant judge about [Jason's] adventures and Lanpher's improbable theory of the offense.*]**

P. Later that afternoon, KCPD officers apprehended [Jason] after a high speed pursuit. While fleeing from KCPD officers, [Jason] discarded a Smith & Wesson Model SW9V semi-automatic handgun in the driveway of a residence. [added, 113a-119a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact P because it is material for the same reasons stated regarding Facts N & O above.*]**

Q. [Jason] was arrested for felony eluding and being a felon in possession of a handgun. [added, App. 159a] **[*Lanpher did not tell, but should have told, the warrant judge Fact Q because it is material for the same reasons as Facts N, O & P above. Fact Q is also material in that it establishes that [Jason] has elected to be a criminal, and, he is, therefore, not as reliable a truth-teller as the run-of-the-mine roommate on a 4-wheeled motor scooter might be. That is relevant to the fact that Lanpher used [Jason] as a witness in the original affidavit for possibly inculpatory facts without informing the warrant judge about [Jason's] adventures and his criminality.*]**

R. On July 29, 2003, at 7:19 PM, 20 hours after shooting, Affiant interviewed [Richard], for the first time, at Research Medical Center, Kansas City, Missouri. [added, App.152a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact R because it is material in correcting the false impression that Lanpher created in the original warrant that [Richard] gave all of the information attributed to him in a single interview prior to the interview of the neighbor [Willingham] immediately after the shooting.*]**

S. Affiant began the interview by asking [Richard], "What happened?" [added, App. 125a, Lanpher Depo., 21:13-22:7)] **[*Lanpher did not tell, but should have told, the warrant judge Fact S because it is material in giving some indication of the questions actually asked by Lanpher and the answers actually given by [Richard].*]**

T. [Richard] stated that he had just got home from going to the store when he heard something in the backyard. He stated he went to the kitchen and saw two black males, both armed with handguns, near the back door. [added, App. 152a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact T because it is material in the same way that Facts C & D above are material, because it indicates that [Richard] did not name his attackers as people he recognized and met before the attack, and he did not see his attackers well enough to provide a description beyond race and gender. That is relevant to* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, C, D & I , *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification.*]**

4. [Richard] stated he began to wrestle with the first one who then shot him. [No change, App.152a.]

5. [Richard] stated the second suspect then shot at him as well and he ran to the basement where he threw stuff at his basement windows to get his neighbors attention. [No change, App. 152a-153a]

6. [Richard] stated while he was in the basement one of the suspects stuck their head in the broken window and stated, "I don't want to kill you." ~~told him not to move, or he would kill him.~~ [edited, App. 153a.]

7. [Richard] stated he then continued to throw stuff at the windows while hiding behind the furnace. [No change, App. 153a.]

8. [Richard] stated when he thought the suspects had left; he went upstairs and called the Police. [no change, App. 153a.]

U. While making this response to Affiant's question, "What happened?" [Richard] did not mention any persons by name. [added, App. 153a] **[*Lanpher did not tell, but should have told, the warrant judge Fact U because it is material in the same way that Facts D & T above are material, because it indicates that [Richard] did not name his attackers as people he recognized and met before. That is relevant to* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, C, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification. Lanpher was asked about this question and answer at deposition, and his testimony was not impressive.* App. 125a, Lanpher Depo., 21:13-22:9. *Fact U is also*

relevant to establishing Lanpher's Kansas City Style *photo lineup ingredient, that [Richard] never saw his attacker's faces during the attack because the attack was so sudden and violent and he ended up naming someone with a familiar face.*]**

V. Affiant did not ask [Richard] about a physical description of the attackers or their clothing; or, whether the lights were on during the attack, and if [Richard] gave a description, Affiant did not write it down. [added, App. 152a-154a; and App. 120a-122a, Lanpher Depo., 16:1-18:22] **[*Lanpher did not tell, but should have told, the warrant judge Fact V because it is material in indicating Lanpher's imprudence, especially considering that he goes on to invent the* Kansas City Style *photo lineup. Getting a physical description of attackers from a witness is so fundamental to eyewitness identification that the KCPD Form reports filled out by Coe,* at App. 93a-94a; *Hiner,* at App. 110a; *Teague,* at App. 111a; *and Finn,* at App. 113a; *are designed to prompt the officer to ask for and list the specific information of*: (Last Name); (First Name); (Middle Initial); (Race); (Sex); (Estimated Age or Date of Birth); (Height); (Weight); (Build); (Hair Color); (Eye Color); (Complexion); (Hat); (Coat); (Shirt); (Pants); and (Address). *Every patrol officer is trained to get that information. If KCPD Patrol Officers in uniform know to get that information, how could it be that a detective in a suit would not ask for that information, or, that a shooting victim would not say something about what the attackers looked like, or what clothes they wore. That smells suspicious. People come in various shapes and sizes. Black males have a variety of hairstyles, from*

clean-shaven to afro to braids or dreadlocks. Black people have a variety of skin tones from light to medium to dark. Home-invading robbers might also wear hats, hoods, or something to conceal their identity. Whether the lights were on or off, obviously matters. What detective is that reckless to claim to do a photo lineup after a surprise attack at night without even asking for a physical description of attackers' sizes, their faces, their clothes and hats, and whether the lights were on? That imprudence is relevant to Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, C, D & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification.*]**

W. Affiant had suspicions about [Richard's] roommate [Jason], so Affiant asked [Richard] if anyone lived with him and he stated that he had a guy who was living with him who helped him with the remodeling of houses. He stated his name was [Jason] and that he hung out with some dudes around the corner on East 62nd in a red brick house. [added, App. 153a] **[*Lanpher did not tell, but should have told, the warrant judge Fact W because it is material in indicating that Lanpher was the one who introduced [Jason's] name into the conversation. That smells fishy. [Jason] rides around town like a fool and knocks on the Family's door as stated in Fact LL below. It looks like Lanpher went to [Richard] armed with his suspicions about [Jason] and, that Lanpher had also jumped to a conclusion about the knock on the door reported by [Spillman] in Fact N above. A result of those suspicions was, at least, Lanpher's admitted steering of the conversation. Fact W is also relevant to* Telfaire factors E & H *identified at* Pet.

14 and App. 42a-43a, *that suggest an unreliable eye-witness identification.*]**

X. [Richard] further stated [Jason] called an hour before [the shooting] occurred from his cell phone and told [Richard] that [Jason] was coming over. He stated that [Jason] did not have a key to the house to his knowledge and that was why he was calling to see if [Richard] was home so he could get in the house. [Richard] was asked about any four wheel ATVs and he stated that he had two a red one and a yellow one. He stated the red one was broken in the garage and the yellow one [Jason] drove all the time. (added, App. 153a.) **[*Lanpher did not tell, but should have told, the warrant judge Fact X because it is material in indicating that, if Lanpher's interview report is accurate, which is questionable, Lanpher and [Richard] are playing some kind of game with each other where Lanpher knows that [Jason] has been riding around like a fool all day on his 4-wheeled motor scooter, and, [Richard] knows that [Jason] has visited him at the hospital, but neither of them is telling the other the important information they know about [Jason's] activities since the shooting.* see App. 159a, "[Jason] lives with the victim and had **not** been **seen** or **heard from** since the shooting occurred." *Apparently, Lanpher left the interview of [Richard] without learning from [Richard] or [Richard's] family that [Jason] had been visiting him and running errands for him. That mutual deception game being played by Lanpher and [Richard] becomes much worse after Lanpher's interview of [Jason].* see *Facts HH, II, LL, and SS below. How can a detective present the true facts and circumstances to a*

warrant judge if he and the shooting victim are playing cat and mouse with the Truth and one another? How can the judges in Middle America consider such game-playing duplicity by a detective permissible when a law-abiding Family gets its front door and one of its faces kicked-in?]**

Y. Affiant during this first interview did not discuss with [Richard], [Jason's] activities since the shooting, and his arrest. (added, App. 152a-154a.) **[*Lanpher did not tell, but should have told, the warrant judge Fact Y because it is material for the reasons discussed in Fact X above. What kind of game is Lanpher playing? How can the warrant judges in Middle America protect the front doors and faces of the barely suspected innocent people in Middle America if the federal judges in Middle America endorse this kind of silly game playing by the detective warrant affiants in Middle America?*]**

Z. Affiant asked [Richard] about any weapons in the house he stated he had a shotgun under his bed and a black and silver Smith and Wesson 9MM handgun that he kept behind the TV. [Richard] was asked about an assault rifle that was found in the house and he lied and stated that he knew nothing about any assault rifle. (added, App. 153a) **[*Lanpher did not tell, but should have told, the warrant judge Fact Z because it is material in showing that [Richard] was not a reliable truth-teller. Not only does Lanpher not tell the warrant judge that [Richard] is a heavily armed drug dealer, Lanpher does not tell the warrant judge that [Richard] lied straight to his face during the investigation. How can the warrant judges in Middle America protect the*

front doors and faces of the barely suspected innocent people in Middle America if a detective warrant affiant can conceal that his hearsay witnesses lie to him during the investigation?]**

AA. Affiant did not ask [Richard] why he thought he needed to have a loaded 12-gauge under his bed with the safety set on fire. (added, App. 102a-104a, 152a-154a., and as an allowable Rule 56 inference from entire evidentiary record.) **[*Lanpher did not tell, but should have told, the warrant judge Fact AA because it is material in showing that Lanpher imprudently did not try to find out who [Richard's] real enemies might be.*]**

BB. At the end of the interview, Affiant asked [Richard], "Give me a name! Who did this to you?" to find out if [Richard] had any suspicions about anyone. According to Lanpher, [Richard] immediately had suspicions about [Jason] and he also had suspicions that the two dudes [Jason] hangs with were the one's who he [thinks] might have done the actual attack. [added, App. 122a, Lanpher Depo. 18-19-22; App. 154a, with Rule 56 editing.] **[*Lanpher did not tell, but should have told, the warrant judge Fact BB because it is material in indicating the actual questions Lanpher asked [Richard] and the actual answers that [Richard] gave during the interview. Fact BB represents the Family's answer to a key predicate fact controversy. The Family makes a winning Rule 56 argument that, in light of all of the evidence, [Richard's] answer to Lanpher's "Give me a Name!, Who did this to you?" was simply a speculative guess that [Jason] might have something to do with the shooting and that [Richard] was also willing to haz-*

ard a speculative guess that the shooters could be the two guys that lived on 62nd Street whose nicknames he had heard and whose faces he had seen before but who he knew little about. Lanpher is the one who argues that [Richard] saw Terrance and Ricardo before at the mysterious red brick house that [Richard] thought they lived in, and, that Lanpher did not tell the judge about. see *Fact RR below. The simple facts that (1) [Richard] knew Terrance and Ricardo's nicknames and faces before the attack, and, (2) that [Richard] thought it possible that Terrance and Ricardo* could be *the attackers, and, (3) that [Richard] did not name anyone as his attackers to Coe or Lanpher yet, together establish that [Richard] never saw his attackers' faces during the attack, because if he had seen the faces he could not think his attackers* could be *someone whose faces and nicknames he knew before the attack. All that is relevant to* Biggers factors 1, 2 & 3 *and* Telfaire factors A, B, C, D, E, F, H & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification.*]**

CC. [Richard] stated he knew the two dudes went by "Dink" and "Mont." He stated he did not know them personally but knew [Jason] went to their house all the time around the corner. [added, App. 154a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact CC because it is material for the same reasons as Fact BB and the other Facts stated in this Corrected Affidavit.*]**

DD. While discussing "Dink" and "Mont" as people he suspected, Affiant asked [Richard] if he would be able to identify the ~~subjects~~ suspects and he stated yes. [added, App. 154a, with Rule 56 editing.)

[*Lanpher did not tell, but should have told, the warrant judge Fact DD because it is material in indicating the actual questions Lanpher asked [Richard] and the actual answers that [Richard] gave during the interview. Fact DD represents the Family's answer to a key predicate fact controversy. The Family makes a winning Rule 56 argument that, in light of all of the evidence, [Richard's] answer to the next question after Lanpher's "Give me a Name!, Who did this to you?" was that [Richard] could "identify" the two guys that lived on 62nd Street whose nicknames he had heard and whose faces he had seen before because he knew their nicknames and faces. That is what that answer meant, Under Rule 56 review of the evidence, the Family makes a winning Rule 56 argument that the true meaning of that question and answer is that [Richard] could identify the two guys he was talking about because he knew their names and faces before the shooting. How could anyone believe that it meant anything else? Who could believe that it meant that he saw the faces of his attackers? He never described his attackers, their clothing, headgear, whether he ever saw them during the attack, or whether the lights were on. Most significantly, Lanpher never went back to the hospital* after *the search warrant execution.* App. 137a-138a, 138a-139a, 149a-151a; Lanpher Depo., 40:2-40:25, 51:7-53:6, 111:8-113:5. *That fact supports an unrefuted Rule 56 reasonable inference that Lanpher did not really believe that [Richard] saw his attackers' faces. How could Lanpher believe that [Richard] saw his attackers' faces if he never went back to the hospital to speak with [Richard] and figure out the cause of the mistaken identification.*]

9. ~~He stated he would be able to recognize the suspects [Dink] and [Mont] again if he saw them~~. [replaced by BB, CC & DD, App. 154a, with Rule 56 editing.]

10. ~~He stated the suspects [attackers] could have been the two guys that his friend who stays with him hung out with on 62nd Street~~. [replaced by BB, CC & DD, App. 154a, with Rule 56 editing.]

EE. Affiant did not ask [Richard] about the information from Montgomery in paragraph L. above, that a neighbor had placed him at the 1318 E. 62nd St., multiple times and conducting business. [added, *see* App. 110a & 154a, and as an allowable Rule 56 inference from entire evidentiary record.] **[*Lanpher did not tell, but should have told, the warrant judge Fact EE because it is material in indicating Lanpher's imprudence, probable cause law imagines a prudent detective and a prudent warrant judge. Lanpher's failure to resolve discrepancies means that he fails the prudence test and his filtering of information makes it impossible for the warrant judge to make a prudent probable cause determination.*]**

FF. Affiant did not ask [Richard] if he had seen "Dink" and "Mont" at any time before the shooting, or, if he had only heard of them. [added, App. 154a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact FF because it is material in indicating Lanpher's imprudence, see discussion accompanying Fact EE above. Lanpher should have asked because it is relevant to* Telfaire factor C, *identified*

at Pet. 13 and App. 42a, *that suggests an unreliable eyewitness identification.* **]****

GG. However, Affiant draws the inference that [Richard] has seen [Dink] and [Mont] before, because [Richard] has seen them hanging out with [Jason] at a red brick house, and 1318 E. 62nd St., is neither red nor brick, it is as described in this Affidavit/Application. [added, as an inference that may be drawn by Plaintiffs since it was already argued by Defendants in their Reply Suggestions at App. 89a-90a.] ****[***Lanpher did not tell, but should have told, the warrant judge Fact GG because it is material in establishing that [Richard] did know Ricardo's face and nickname and Terrance's face and nickname prior to the attack because the fact that [Richard] associated Terrance and Ricardo with a red brick house when the Family home was neither red nor brick meant that [Richard] had to see them before at a red brick house. That was the exact explanation given by Lanpher.* App. 89a-90a. *Lanpher's deposition testimony indicated that he consciously decided to filter information from the warrant judge about the red brick house.* App. 86a-87a, ¶49; App. 140a-145a; Lanpher Depo., 67:6-73:10. *Lanpher wrote a bare bones affidavit that exaggerated every fact suggesting particularized suspicion and he withheld all of the exculpatory facts from the warrant judge's consideration. Lanpher imprudently made no effort to resolve any discrepancies. The red brick house discrepancy is relevant to* Telfaire factors C, H & I, *identified at* Pet. 13-14 and App. 42a-43a., *that suggest an unreliable eyewitness identification. Fact GG is also relevant to establishing Lanpher's* Kansas City Style

photo lineup ingredient, that [Richard] never saw his attacker's faces during the attack because any later naming of someone as a possible attacker who lived nearby and who he had seen at a red brick house establishes that [Richard] knows that he did not see the attackers' faces, because otherwise he could not have suspected someone who he had seen before the attack.]**

HH. On July 29, 2003, at 9:50 PM, after his first interview of Richard at the hospital, Affiant interviewed [Jason], who was being held on felony eluding and Felon in Possession. [added, App. 159a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact HH because it is material for the same reasons stated in the explanations for Facts N, O, P & Q above.*]**

II. [Jason] stated that he had visited [Richard], his mother and his girlfriend at the hospital on July 29, 2003; and, that [Richard] had described the assailants as "two black dudes" "***one*** of them was ***stocky*** and the ***other*** a ***short*** dude." [added, App. 161a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact II because it is material in that it provides the only other description attributed to [Richard] of physical characteristics of the attackers other than race and gender. [Jason], the Hospital Visiting Suspected Mastermind on a 4-Wheeled Motor Scooter, is a more informed crime investigator than Lanpher. How could that be okay to the judges in Middle America? Lanpher would have to be quite imprudent for the reasons stated in Fact V above, but, lo and behold, [Jason], the fool on a scooter, offers Lanpher a reminder that he ought to get, from*

[Richard], the very best description of the attackers that [Richard] could give. It really smells like rat that Lanpher has no physical description; perhaps [Richard] told him that he never saw the faces, but Lanpher knows that a photo lineup is the fastest way to a search warrant. Also, Lanpher should have told the warrant judge Fact II because it is material for the same reasons stated in the explanations for Facts N, O, P, & Q above. The fact that Lanpher has imagined [Jason] to be the Suspected Mastermind of [Richard's] attempted murder is something that Lanpher is supposed to tell the warrant judge. The fact that Lanpher's theory makes much less sense when [Jason] is visiting his wounded friend [Richard] and running errands for him is something the Lanpher should also tell the warrant judge. **]****

JJ. [Jason] also stated that [Richard] believed it might have been the "two dudes" known to [Jason] as "Dink" and "Mont." [added, 161a-162a.] ****[***Lanpher did not tell, but should have told, the warrant judge Fact JJ because it is material in corroborating the [Richard] was only offering a speculative guess about who his attackers might be. In light of the other evidence, that further confirms that [Richard] did not see his attackers' faces and that he knew that he did not.***]****

KK. Affiant asked [Jason] if he knew "of any other people after [Richard]" and he replied that [Richard] was having problems with [Fuzzy], but [Jason] did not know who he was or what he looked like. [added, App. 162a.] ****[***Lanpher did not tell, but should have told, the warrant judge Fact KK because it is material in letting the warrant judge know that Richard*

has chosen a dangerous life by electing to be a criminal and that he has made enemies. In light of Facts J & K above and the explanations about their materiality, the warrant judge should know those things about [Richard].]**

LL. [Jason] denied involvement in the shooting and described how he learned about the shooting and his activities that day. When asked about the report that the neighbor [Spillman] observed him "going up to" the Morris Home, [Jason] stated that he "did go up there before he went to the hospital to see if they had seen anything, but no one was home." [added, App. 162a-163a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact LL because it is material in indicating Lanpher's theory of the offense and that the theory makes little sense. It is clear that Lanpher placed great importance on [Jason's] bizarre behavior and the knock on the Family's door. The fact that [Jason] offers a plausible explanation that proves to be true means that Lanpher did encounter two conflicting material facts that he chose to resolve himself instead of presenting to the warrant judge to let the warrant judge sort out. You really ought to look at the original affidavit and see that Lanpher did not tell the warrant judge anything that would have let the warrant judge protect the Family from Lanpher's recklessness and artfulness.*]**

17. ~~Neighbors identified 1318 E. 62nd Street as the house that [Richard]'s friend hung out with.~~ (replaced with L, M, N & LL)

MM. At the end of the interview, Affiant presented a photo line-up consisting of six black males, which in-

cluded a photograph of Ricardo Morris. [Jason] recognized the photograph of Ricardo and identified him as the person he knew to be "Dink." [Jason] then initialed and dated the back of the photograph. [added, App. 155a-156a, 163a.] **[*Lanpher did not tell, but should have told, the warrant judge Fact MM because it is material in clarifying what this photo lineup with [Jason] indicated. [Jason] was not a witness to the shooting so there was no reason to do a photo lineup with him. [Jason] only knew the nicknames, so the only reason Lanpher wanted to show a photo to [Jason] was to match the nickname with the address. Why would not Lanpher just show [Jason] the picture of Ricardo and ask if that is the person whose nickname he knows?*]**

20. ~~The subject who lives with the victim also identified the subject.~~ [replaced with MM & NN]

NN. Affiant created the photo lineup by conducting a law enforcement computer check for alert records on Terrance and Ricardo. The alert records showed Ricardo and Terrance to be nearly the same height and weight relative to one another and both of them neither short, nor stocky. Ricardo as 6 feet tall, 160-170 lbs., and Terrance as 6 feet, 1 inch tall, and 175 lbs., respectively. The alert records showed no serious crimes or alerts on them. [added, App. 134a-136a, Lanpher Depo., 35:19-38:16; App. 164a-165a; (Tab E22, Ap.Ex. 69); and, as an allowable Rule 56 inference] **[*Lanpher did not tell, but should have told, the warrant judge Fact NN because it is material in establishing that Ricardo and Terrance do not match the only physical description of the attackers given by [Richard]. Also, the alert records indicate*

only traffic tickets for Ricardo and Terrance. Why would young men who reach the ages of 24 years and 22 years without having any criminal record be suspected of trying to kill an armed drug dealer just because the drug dealer's roommate knocks on their door to find out if they saw or heard anything the night of the shooting? Lanpher also should have told the warrant judge that the computer check provided exculpatory information because otherwise the mention of the computer check suggests to the warrant judge that their is a confirmed criminal history and the exact opposite was true.]**

OO. On July 30, 2003, at 10:20 AM, the next morning after the interview of [Jason], Affiant went to the Hospital with the same photo line-up that he had shown [Jason] the night before. [added, App. 154a-158a] **[*Lanpher did not tell, but should have told, the warrant judge Fact OO because it is material in establishing the dates and times of the relevant interviews and the questions asked.*]**

18. ~~A computer check was conducted and a photo line-up was shown to [Richard], which included a resident of 1318 E. 62nd Street.~~ [replaced by MM, NN & OO]

PP. Richard viewed the line-up and identified Ricardo as the person he had seen before with [Jason] at the nearby red brick house, that is not 1318 E. 62nd St., the subject of this warrant, and the person who he was talking about when asked if he had any suspicions about anybody that may be involved in the incident. Richard initialed and dated the back of the photograph under the writing made by [Jason]

the night before. [added as an allowable Rule 56 inference supported by this evidence, App. 131a, Lanpher Deposition, 28:3-29:1; App. 152a-154a, and *see* GG, MM, NN & OO above.] **[*Lanpher did not tell, but should have told, the warrant judge Fact PP because it is material in indicating the actual questions Lanpher asked [Richard] and the actual answers that [Richard] gave during the interview. Fact PP represents the Family's answer to a key predicate fact controversy. The Family makes a winning Rule 56 argument that, in light of all of the evidence, [Richard] recognized Ricardo's face as the neighbor about whom he had uninformed suspicions. Of course, [Richard] could recognize his face, they are neighbors and [Richard] saw him before at the mysterious red brick house described and discussed in Facts W, BB above and Fact RR below. Lanpher's deposition testimony establishes the exact question that he asked [Richard] was whether [Richard] recognizes anybody in this lineup as the person that* ***may be*** *involved in the incident. Lanpher's* Kansas City Style *photo lineup invention was complete. That is not the right way to do things. Lanpher made the mistake. Why are the judges in Middle America trying to blame [Richard] as if he ever claimed to see faces that were not there? [Richard] was not trying to name names. He only gave a name after Lanpher said, Give me a name! Who did this to you?" [Richard] guessed that it was someone whose face and nickname he already knew. The only way that he could make that guess was by knowing that he did not see the faces of the attackers. Lanpher made the mistake and he was reckless and/or artful in making the mistake. Lanpher knew that he was artful; he never went back to the*

hospital to tell [Richard] that Ricardo was at work and not involved. Lanpher never went back to do a photo lineup of Terrance. Terrance's alibi was not so great, Terrance explained that he was at the Family home during the shooting. Lanpher even claimed that he still considered Terrance a suspect. see App. 85a. *Why would Lanpher not do a photo lineup of Terrance after Terrance's arrest? Presumably, the only reason Lanpher did not do one earlier was that Terrance had never been arrested before and there was no mugshot of Terrance. After the search warrant execution and Terrance's arrest there is now a mugshot of Terrance. Who can not figure out that Lanpher never did a photo lineup of Terrance, because Lanpher knew that [Richard] did not see his attackers' faces and Lanpher only does photo lineups to get search warrants? Lanpher knew that he was artful and told a fib about the photo lineup and whether [Richard] ever said the word shooter. Fact PP is relevant to* Biggers factors 1, 2, 3, 4 & 5 *and* Telfaire factors A, B, C, D, E, F, H & I, *identified at* Pet. 13-14 and App. 42a-43a, *that suggest an unreliable eyewitness identification, in just about everyway that you can think of, Lanpher's* Kansas City Style *photo lineup breaks the clearly established law for eyewitness identification. Is there any surprise that such a reckless or artful procedure end up with a "suspect" who was at work miles away at the time of the crime? Who is surprised? The judges in Middle America seem to think that detectives like Lanpher are this recklessly incompetent all of the time, but are there any 42 U.S.C. §1983* Franks v. Delaware *cases with facts this bad?*]**

19. ~~The victim identified this subject as the one he wrestled with and shot him.~~ [replaced by PP]

QQ. Affiant did not ask any questions about why, if [Montgomery] is truthful in L above, why [Richard] did not identify Dink and Mont as his attackers at the scene or when first asked, "What happened?" before the photo lineup or why the photo lineup is necessary. [added as allowable Rule 56 inference from entire evidentiary record. including App. 110a; App. 120a-122a, Lanpher Depo., 16:1-18:22] **[*Lanpher did not tell, but should have told, the warrant judge Fact QQ because it indicates Lanpher's imprudent failure to resolve discrepancies. If Lanpher told the warrant judge the entire story, the warrant judge could have protected the Family from Lanpher's imprudent recklessness and artfulness.*]**

RR. Affiant did not explore why if [Richard] knew Dink and Mont from seeing him at a red brick house as in FF. above, he did not identify them as attackers at the scene or when first asked What happened?" before the photo lineup or why the photo lineup is necessary. [added as allowable Rule 56 inference from entire evidentiary record. including App. 120a-122a, Lanpher Depo., 16:1-18:22; and *see* App. 89a-90a., and GG above.] **[*Lanpher did not tell, but should have told, the warrant judge Fact RR because it indicates Lanpher's imprudent failure to resolve discrepancies. If Lanpher told the warrant judge the entire story, the warrant judge could have protected the Family from Lanpher's imprudent recklessness and artfulness. The entire evidentiary record proves that [Richard] never saw his attackers' faces and that he never claimed that he did. [Richard]*

never claimed that he saw his attackers' faces. He never did. He never did claim that.]**

SS. Affiant did not ask [Richard] about the physical description and the fact that [Jason] visited him at the hospital. [added as allowable inference from entire evidentiary record. including App. 120a-122a, Lanpher Depo., 16:1-18:22, and *see* C, T, V, II and NN above.] **[*Lanpher did not tell, but should have told, the warrant judge Fact RR because it indicates Lanpher's imprudent failure to resolve discrepancies. If Lanpher told the warrant judge the entire story, the warrant judge could have protected the Family from Lanpher's imprudent recklessness and artfulness. Lanpher should have taken the hint from [Jason] and all of the investigative reports in his file by patrol officers that say that you have to get a physical description. Once Lanpher learned that [Jason] had visited [Richard] at the hospital, Lanpher had to ask about that because it made the whole idea of suspecting [Jason's] involvement questionable. It is impossible to understand why Lanpher was playing games with [Richard] about [Jason's] suspected involvement, Please see discussion in Facts X and Y above. Why was Lanpher playing cat and mouse with the Truth and [Richard] and why did he not tell the warrant judge about his silly games?*]**

TT. To sum things up. [Richard] thinks [Jason] might be possibly involved because of a phone call made an hour before the attack, and suspects two guys because they live nearby and know his roommate also. Richard never stated a reason why his roommate would want to hurt him. (added as allow-

able Rule 56 inference from entire evidentiary record.)

UU. With the exception for this specific crime, Affiant has no knowledge of anyone attributing any single volitional misdeed to [Terrance] or [Ricardo]. (added as allowable Rule 56 inference from entire evidentiary record.)

Since this is a violent crime investigation, a tactical entry team will execute this warrant. A ten second count will be done after knock and announce. If any persons are inside, they will be treated as potentially armed and dangerous. If there is any damage to the door and frame the policy of the KCPD is to not pay for it.

Shall Warrant Issue? Yes No

Lanpher's Original July 30, 2003, Affidavit/Application for Search Warrant
(Reprinted)

I, Det. Jarrett Lanpher, affiant and applicant herein, being duly sworn, appear now before the undersigned Judge authorized to issue warrants in criminal cases and makes this Affidavit and Application in support of the issuance of a Search Warrant, to search the following described person place or thing:

> 1318 E. 62nd Street, Kansas City, Jackson County, Missouri, a single family dwelling, white in color with brown trim and the numbers 1318 clearly visible on the house. The house is located on the north side of 62nd Street.

And there to search for and seize, photograph or copy, and make return thereof, according to law, the following property or things:

> Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights

Affiant and applicant being duly sworn deposes and states that he has Probable Cause to believe that the above listed property to be searched and seized, photographed or copied, is now located upon said described person place or thing based upon the following facts, to-wit: (and additional sheet(s) if needed)

On 7-28-2003, at 2300 hours, members of the Kansas City, Missouri, Police Department were dispatched to 6206 Paseo in regard to a shooting. Officers located the victim suffering from gunshot wounds. The

victim stated that two black males confronted him in his kitchen armed with handguns. He stated he began to wrestle with the first one who then shot him. He stated the second suspect then shot at him as well and he ran to the basement where he threw stuff at his basement windows to get his neighbors attention. He stated while he was in the basement one of the suspects stuck their head in the broken window and told him not to move, or he would kill him. He stated he then continued to throw stuff at the windows while hiding behind the furnace. He stated when he thought the suspects had left; he went upstairs and called the Police. He stated he would be able to recognize the suspects again if he saw them. He stated the suspects could have been the two guys that his friend who stays with him hung out with on 62nd Street.

The neighbor was then contacted and he stated that he heard noises from the basement of the victim's house when he looked outside he observed the victim in the basement hurt yelling for help. He stated he then saw someone with a flashlight in the garage of the victim's house. He stated he yelled, "Police don't move," and the suspect ran down the driveway towards Paseo. During the investigation a flashlight, still on, and a handgun were located in and near the driveway, north of the victim's house leading from the garage. The gun was located on the other side of the fence as if someone may have jumped the north fence running north towards 62nd Street.

Neighbors identified 1318 E. 62nd Street as the house that the victim's friend hung out with. A computer check was conducted and a photo line-up was

shown to the victim, which included a resident of 1318 E. 62nd Street. The victim identified this subject as the one he wrestled with and shot him. The subject who lives with the victim also identified the subject.

/s/Dawn Parsons — /s/ Det. Jarrett Lanpher 4131
Assistant Prosecutor — Affiant and Applicant

Subscribed and Sworn to me this 30th Day of July, 2003. at the hour of 1:29 PM.

/s/ Richard Standridge
Judge

July 30, 2003, Search Warrant Execution Report by Hernandez
(Reprinted Digest)

Kansas City, Missouri Police Department
Report Form

Date of Occurrence: 07-30-2003
Time of Occurrence: 1430
Location Occurrence: 1318 E. 62nd St.

Classification

Execution of a Search Warrant

Subject 1

Last Name: Morris
First Name: Terrance Init: L.
Race: B Sex: M
Est. Age/DoB: 08-11-1981
Hgt.: 6 1 Wgt: 160 Build: Thin
Hair: Bk Eyes: Br Comp: [blank]
Hat: [blank] Coat: [blank] Shirt: Black
Address: 1318 E. 62nd St., Pants: Blue
Business: UPS Central & James
Spec. I.D. Char.: Afro hair cut.

NARRATIVE:

On 07-30-03 at approximately 1355 hours, the members of 630 Squad were contacted by Det. Lanpher of the Homicide Unit in regard to an execution of a Search Warrant at 1318 E. 62nd St.

Sgt. Hockemeier, P.O. Rizzo, Det. Lanpher, and I conducted a drive-by of 1318 E. 62nd to confirm the information of the Search Warrant to be accurate. The

Search warrant was observed to have been signed by Judge Standridge on July 30, 2003, at 1329 hours.

Det. Lanpher, the members of 630 Squad, and Radio #215 P.O. Bush and P.O. Vanderlinden conducted a briefing at the Metro Patrol Division in regard to the Execution of the Search Warrant at 1318 E. 62nd St.

Upon completion of the briefing, the members of the 630 Squad executed the Search Warrant at 1318 E. 62nd St. The members of the 630 squad approached the house and in a loud clear voice answered "Police Search Warrant" and upon completing a 10 second count the Inner door was breeched by P.O. Bronner causing splintering to the door and jam. The members of 630 made entry in the following order: #1 P.O. Hernandez, P.O. Barbour #2, #3 P.O. Travis, #4 Sgt. Hockemeier, #5 P.O. Rizzo, #6 P.O. Knueppel, and #& P.O. Bronner. Upon entry the #1 subject was encountered in the kitchen area and was observed to be uncooperative to verbal commands and was forced to the ground by P.O. Hernandez. while the members of the 630 Squad completed the securing of the residence, the #1 subject continued to not comply with verbal commands and an attempt of a brachial stun was conducted by Sgt. Hockemeier which resulted in him being kicked in the mouth causing a bloody lip. Upon the residence being cleared and safe, the #1 subject and the residence was released to Det. Lanpher. MAST #103 responded to the scene for the #1 subject.

/s/ P.O. Anthony Hernandez, # 4448

Lanpher's July 30, 2003, "Here's My Business Card, Tell Ricardo to Call Us." Report
(Reprinted Digest)

KANSAS CITY, MISSOURI POLICE
DEPARTMENT
INVESTIGATIVE REPORT [CASE DOCUMENT]

Title of Investigation		Subject of Report	
Assault (Agg) Richard D. Schiele, BM, 3-26-1973 6206 Paseo		Interview of: Ricardo Morris, BM, 6-24-1979 1318 E. 62nd Street	
Report By: Det. Jarrett Lanpher #4131	Assignment: Homicide Unit	Date: 8-6-2003	Page 1 of 2 Pages

On 7-30-2003, at 1800 hours, Ricardo Morris responded to Police headquarters and contacted the reporting detective. He was escorted to the interview room located on the second floor. He had been identified by the victim as the shooter in the above captioned incident.

Morris read his Miranda rights aloud using Form 340 P.D. He stated he understood them and signed the form. Morris stated that on Monday 7-28-2003 he was at work from 2100 hours to about 0100 hours and that he then went to his girlfriend's house. He stated he works for RMX and company with UPS and that they were located at Northland Park off of 210 Highway past Ameristar Casino. He stated he is an actual employee of Nesco Resources but they send them to dif-

ferent locations. He was unable to provide a phone number to the warehouse where he was at and the number he provided, no one answered after hours.

Morris agreed to wait in the interview room while the reporting detective responded to his job to verify his work schedule.

The reporting detective then responded to UPS Mail Innovation, which is located at 3621 NE Kimball. Michael Pruett was contacted who is a manager there and he verified that Morris was an employee there and that he was working on 7-28-2003 from 2057 hours to 1221 hours. He provided a printout of Morris's time card, which is attached as page two of this report.

The reporting detective then responded back to Police Headquarters and recontacted Morris in the interview room where he was advised of the information obtained from his job. Morris was asked why anyone would identify him from a lineup as the suspect and he stated he did not know. He was asked if he knew the victim and he stated "No." He was asked if he knew Jason Lancaster and he stated he knew him through a friend, but he did not know where he lived. He stated that Jason would sometimes come by riding a four-wheeler. Morris was then released.

FEBRUARY 12, 2004
OFFICE OF COMMUNITY COMPLAINTS
SUMMARY AND MEMORANDUM

TO: Board of Police Commissioners

FROM: Karen L. Ullery, O.C.C. Analyst, Office of Community Complaints

COMPLAINANT: Ms. Rosalind Morris, 1318 E. 62nd Street

CO-COMPLAINANT: Mr. Terrance Morris, SAA

SUBJECT: Unauthorized Use of Force, Re: Sgt. Mark Hockemeier

O.C.C. FILE: #03-209-1

I. INVESTIGATION SUMMARY

A. Synopsis of Complaint:

Ms. Rosalind Morris claims her son was treated poorly and was kicked in the face during the execution of a search warrant at her residence.

It is the recommendation of the Office of Community Complaints ("Office") that the complaint against Sgt. Mark Hockemeier be unsubstantiated.

B. Complainant/Co-Complainant Statement(s):

Ms. Rosalind Morris relates she returned home to her residence and encountered officers who explained her home was being searched. She notes the officers questioned her about her sons, who they (the officers) suspected in a shooting in the neighborhood. She states a detective told her that

her son, Mr. Terrance Morris, had resisted arrest and was hit in the mouth, and an ambulance was coming. Ms. Morris recalls when she was allowed back into her house, everything was out of order. She mentions her other son came home (Mr. Ricardo Morris), and after he talked to detectives, he and Terrance were released from suspicion.

Mr. Terrance Morris states he was in the house when he heard a loud noise. He states when he went upstairs to see what the noise was, he saw officers who told him to freeze and to get on the ground. He notes as he was getting on the ground, an officer pushed him down and he was kicked in the mouth by an officer wearing a steel-toed boot.

C. Officer Statement(s):

Sgt. Mark Hockemeier states he entered the Morris residence because of a search warrant and encountered Mr. Terrance Morris. He relates Mr. Morris was ordered to the ground, but kept his hands tucked underneath him. Sgt. Hockemeier recalls Mr. Morris was wedged into a small space, and after refusing to obey the orders of the officers, St. Hockemeier attempted a brachial stunt, which involved striking the person between the shoulders and neck. St. Hockemeier states Mr. Morris moved as he was attempting the brachial stunt, and he ended up kicking Mr. Morris in the mouth, causing his mouth to become bloodied. He recalls Mr. Morris was handcuffed and MAST Ambulance was called to provide medical attention.

P.O. David Barbosa, P.O. Anthony Hernandez, P.O. Phillip Travis, Det. Jarrett Lanpher, Sgt. Rober Schweitzer, P.O. Michael Bush, and P.O. Curtis Vanderlinden were all contacted and related they did not observe the contact between Sgt. Hockemeier and Mr. Morris. Several officers relate they observed Mr. Morris with a bloodied lip.

D. Other Pertinent Facts/Statements:

No videotape of the incident was available. A copy of the air tape is included in the file.

Copies of reports completed in regard to the search warrant and the shooting in the neighborhood are included in the complaint file.

Mr. Terrance Morris was offered the opportunity to take a polygraph examination in regard to his allegation of excessive force. The results of the examination were inconclusive.

II. APPLICABLE POLICY OR PROCEDURE

Procedural Instruction #01-3, "Use of Force"

III. RECOMMENDATION

A. Finding:

The Office of Community Complaints recommends the complaint against Sgt. Mark Hockemeier be unsubstantiated.

B. Basis of Decision:

It is unknown if the force used on Mr. Morris was reasonable given the circumstances. Without

videotape of the incident or other officers or citizens who witnessed the kick, it cannot be determined if that action was appropriate given the nature of the incident.

Submitted by:

/s/ Karen L. Ullery
Karen L. Ullery
O.C.C. Analyst
Office of Community Complaints

I concur.

/s/ I. Pearl Fain
2/24/04

Lanpher's October 30, 2003,
Inactivation Report
(Reprinted digest)

INACTIVATION REPORT

1. All Leads Exhausted _X__
2. Uncooperative Victim Or Witness _X__
3. Victim and or Witness Unavailable or Deceased ____
4. Victim and or Witness Unable to Identify Suspect(s) _X__
5. Inadequate Information (Poor Records, etc.) ____
6. Action Being Taken by Other Agency ____
7. Deferred to other Department Elements, or Other Agency ____
8. Prosecutor Consulted and Will Not File ___
9. Pick Up Issued (Over 30 Days) ____
10. Person Contacted _____ Date _____ Time _____
11. Other Remarks:
    Victim unable to identify suspect and has yet to respond for a formal statement.

Date Assigned: 07-28-2003

Detective: /s/ Det. Jarrett Lanpher 4131

Date Inactivated: 10-30-2003

Supervisor: /s/ Sgt. Robert Schweitzer 3656

KANSAS CITY, MISSOURI POLICE DEPARTMENT
INVESTIGATIVE REPORT [CASE DOCUMENT]

Title of Investigation		Subject of Report	
Assault (Agg) Richard D. Schiele (Sanders), BM, 3-26-1973 6206 Paseo Occurrence: 7-28-2003 @ 2300 hrs, 6206 Paseo		Case Information	
Report By: Det. Jarrett Lanpher #4131	Assignment: Homicide Unit	Date: 10-29-2003	Page 1 of 1 Pages

As of 10-29-2003, the above listed victim has yet to respond for a formal statement. Several attempts have been made for this statement. The victim identified a possible suspect while in the hospital and that person he identified was found not to be involved as verified through his employer as being at work at the time of this incident.

The victim has not provided any further information or leads to follow at this time and the case will be inactivated.

09-318

In the
Supreme Court of the United States

Terrance Morris, Rosalind Morris
& Ricardo Morris,
Petitioners,

v.

Jarrett Lanpher & Robert Schweitzer
Respondents.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit

Petition for Rehearing

Paul Matthew Tancredi
Counsel of Record
Paul Matthew Tancredi, Lawyer
5309 Woodland
Kansas City, Missouri 64110
816-444-5400

Questions Presented

In their Complaint, the Petitioners, the Family, clearly pled a false and incomplete search warrant application claim, and, a derivative failure to supervise claim against the Respondents.

While the Respondents' motion for summary judgment was pending, the Petitioners and the Respondents jointly proposed jury instructions which identify the *essential elements* of the pled claims.

A close look at the Respondents' motion for summary judgment, and, the agreed jury instructions, reveals that Respondents' motion evidence and argument never squarely meets any of the *essential elements* of the pled *Franks v. Delaware* claim. Instead, the Respondents' motion attempted to defeat a never pled *Malley v. Briggs* facially invalid search warrant application claim. Therefore, the questions presented in this Petition for Rehearing are:

1. Can defendants moving for summary judgment possibly meet their *burden of persuasion* for entitlement to *judgment as a matter of law* if they try to defeat an unpled claim and their evidence and argument *never* squarely meets nor defeats any *essential element* of the pled claim at issue?

2. Does a lawyer's duty of candor not apply to *Celotex* "absence of evidence" assertions made by defendants moving for summary judgment in today's federal courts?

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Current Order in this Court

This Court denied the Petition for Certiorari by Order dated October 20, 2009.

Statement of Grounds for Rehearing
(Sup. Ct. R. 44)

Petitioners, the Family, state the substantial grounds not previously presented in the Petition for Writ of Certiorari. The numbered parts of this Petition organize the presentation, but do not state separate individual grounds. Petitioners respectfully request the Court to consider all of the parts together as the Petitioners' grounds warranting the grant of Rehearing on the Petition for Writ of Certiorari.

I.

The Family clearly pled a *Franks v. Delaware* false and incomplete search warrant application claim against Lanpher.

The Family's Complaint is reprinted in this Petition's Appendix. App. 215a-240a. The Complaint includes a Statement of Facts. App. 215a-232a, ¶¶19-79.

Count I follows the Statement of Facts. App. 232a-235a, ¶¶80-95. The first paragraph of Count I incorporates all paragraphs from the Statement of Facts. App. 232a, ¶80.

Count I states the claim against Lanpher for Illegal Affidavit/Application for Search Warrant. The stated and incorporated paragraphs clearly allege the specific constitutional violation of dishonesty and the failure to disclose exculpatory facts in a search warrant affidavit/application.

In paragraphs 47-48, the Family alleges knowing, deliberate and reckless omissions of exculpatory material facts and false light. App. 223a, ¶¶47-48.

In paragraphs 49-53, the Family alleges knowing, deliberate and reckless false chronology; misrepresentation; incompleteness; and intent to mislead the prosecutor and the warrant judge. App. 224a-225a, ¶¶49-53.

In paragraph 84, the Family alleges that KCPD Legal Bulletin No. 98-2 tells KCPD Officers the legal requirements for honesty and disclosure of exculpatory facts in warrant affidavits. App. 232a-233a, ¶84.

In paragraphs 87-94, the Family alleges the damages directly and proximately resulting from Lanpher's Illegal Affidavit/Application for a Search Warrant. App. 233a-234a, ¶¶87-94.

In the relevant paragraphs that stated the claim against Lanpher, the Family clearly alleged knowing, deliberate and reckless dishonesty; the failure to disclose exculpatory facts; and, an intent to mislead the prosecutor and the warrant judge.

II.

The Family clearly pled a failure to supervise claim against Schweitzer for directly participating in Lanpher's *Franks v. Delaware* violation.

Count II follows Count I. App. 235a-239a, ¶¶96-117. The first paragraph of Count II incorporates all paragraphs from the Statement of Facts and from Count I. App. 235a, ¶96.

Count II states the claim against Schweitzer for

Failure to Supervise Lanpher. It is clear that the stated and incorporated paragraphs allege Lanpher's underlying constitutional violations to be, specifically, dishonesty, and, the failure to disclose exculpatory facts in a search warrant affidavit/application.

In paragraphs 100-101, the Family alleges that Schweitzer knew that KCPD officers would swear out Affidavit/Applications for Search Warrants that included deliberately false and misleading information and, that failed to disclose exculpatory facts then known to the affiant. App. 236a, ¶¶100-101.

In paragraphs 104-116, the Family alleges the damages directly and proximately resulting from Schweitzer's failure to supervise Lanpher and Schweitzer's direct participation in Lanpher's underlying constitutional violation. App. 237a-239a, ¶¶104-116.

In the relevant paragraphs that stated the claim against Schweitzer, the Family clearly alleged Schweitzer's failure to supervise Lanpher; and, Schweitzer's direct participation in: Lanpher's knowing, deliberate and reckless dishonesty; failure to disclose exculpatory facts; and, intent to mislead the prosecutor and the warrant judge.

III.

The Family's and the Respondents' jointly proposed jury instructions identify the *essential elements* of the clearly pled *Franks v. Delaware* claim.

While the Respondents' motion for summary judgment was pending, the Petitioners and the Respon-

dents jointly proposed jury instructions which identify the essential elements of the pled claims. App. 241a-245a.

For Count I, the Family and Lanpher agreed that the essential elements were:

> ***First***, defendant Lanpher swore an affidavit/application for search warrant in which he made false statements or omitted truthful information that created a falsehood; and
>
> ***Second***, defendant Lanpher made those omissions or false statements either deliberately or with a reckless disregard for the truth; and
>
> ***Third***, those omissions or false statements were material, or necessary, to determining whether or not probable cause for the search warrant existed, and
>
> ***Fourth***, plaintiffs suffered damages as a direct result of defendant Lanpher's actions. App.243a.

The Family and Lanpher also agreed to a paragraph explaining Fourth Amendment search warrant requirements, the definition of probable cause, and the definitions for *Franks v. Delaware* reckless disregard for the truth for included and/or omitted information. App. 243a-244a.

The Family and Lanpher also agreed to the authority supporting the jointly proposed instruction, and listed those authorities. App. 244a.

Notably, one case listed, *Hunter v. Namanny*, 219 F.3d 825 (8th Cir. 2000), is a leading Eighth Circuit precedent for 42 U.S.C. §1983 *Franks v. Delaware*

claims. The other listed authorities are well-known for the relevant principles they establish. App. 244a.

IV.

The *essential elements* of the *Franks v. Delaware* claim identified in the jointly proposed jury instructions mandate evidence and argument specifically related to the *truthfulness* and *completeness* of the sworn affidavit/application for search warrant filed by Lanpher.

The *essential elements* of the jointly proposed jury instructions are the *ultimate fact questions* at issue in the case.

Element One presents pure questions of *historical fact*.

> ***First***, defendant Lanpher swore an affidavit/application for search warrant in which he made false statements or omitted truthful information that created a falsehood;

Everyone agrees that Lanpher swore an affidavit/application for search warrant.

What remains at issue is (1) whether any of the statements in the affidavit are false; and/or (2) whether Lanpher failed to present truthful and complete description of the totality of the facts known to him.

The only way to squarely deal with the *historical fact* issues of this Element One is to put on evidence and argument specifically related to the *truthfulness* and the *completeness* of the sworn affidavit.

Element Two and Element Three can not be decided

until Element One's pure questions of *historical fact* are answered affirmatively; that, yes there were false statements, and/or omissions of truthful information. Once you have those answers; then Element Two presents a question of *historical fact*, and, a *mixed law-fact* question; and, Element Three presents a *mixed law-fact* question.

> ***Second***, defendant Lanpher made those omissions or false statements either deliberately or with a reckless disregard for the truth; and
>
> ***Third***, those omissions or false statements were material, or necessary, to determining whether or not probable cause for the search warrant existed.

Element Two's question of *historical fact* is whether any false statements or omissions of truthful information were made deliberately.

Element Two's *mixed-law fact* question is whether any false statements or omissions of truthful information were made with a reckless disregard of the truth. That is a *mixed law-fact* question because *Franks* "reckless disregard for the truth" is a legal standard defined differently in the lower federal courts.

Element Three's *mixed-law fact* question is whether any false statements or omissions of truthful information were material, or necessary, to determining whether or not probable cause for the search warrant existed. That is a *mixed law-fact* question because the relative materiality of information relevant to a probable cause determination; and, the probable cause determination itself, depend on legal standards.

For this Petition for Rehearing, the key point is that Element Two's *historical fact* question and *mixed-law fact* question are unanswerable until you have an answer to Element One's pure questions of *historical fact* regarding the *truthfulness* and *completeness* of the sworn affidavit.

The exact same thing can be said about Element Three's *mixed law-fact* question. It too is not answerable without an answer to Element One's pure questions of *historical fact* regarding the *truthfulness* and *completeness* of the sworn affidavit.

Because Element Two and Element Three cannot be decided unless Element One's pure questions of *historical fact* regarding the *truthfulness* and *completeness* of the sworn affidavit are decided first, the Respondents could not prevail on their summary judgment motion unless they put on overwhelming evidence in their favor on the *truthfulness* and *completeness* of the sworn affidavit.

V.

In their motion for summary judgment, Respondents' motion evidence and argument never squarely meets any *essential element* of the pled *Franks v. Delaware* claim because they put on no evidence or argument regarding the *truthfulness* and *completeness* of the sworn affidavit.

The Respondents' burdens as defendants moving for summary judgment are described excellently in the following passage:

> A moving party without the ultimate burden of persuasion at trial -usually, but not always, a de-

> fendant -has both the initial burden of production and the ultimate burden of persuasion on a motion for summary judgment. *See* 10A C. WRIGHT, A. MILLER AND M. KANE, FEDERAL PRACTICE AND PROCEDURE § 2727 (3rd ed. 1998). In order to carry its burden of production, the moving party must produce either evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. In order to carry its ultimate burden of persuasion on the motion, the moving party must persuade the court that there is no genuine issue of material fact. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000) [some internal citations omitted]

The only evidence that the Respondents offer in their motion for summary judgment are the same "facts" that Lanpher stated in his original warrant application. App. 48a-49a, ¶¶4-12. The Respondents then argued that those "facts" demonstrate probable cause and that, therefore, Respondents get summary judgment.

That is not an appropriate route to summary judgment because the *essential elements* of the pled *Franks v. Delaware* claim deal with whether Lanpher's affidavit/ application for search warrant was a *truthful* and *complete* retelling of the *totality* of the circumstances known to Lanpher when he swore to its contents.

Please remember that Respondents never solved the

crime, and, never even came close. An innocent Family's house was kicked-in after a purported photo lineup identification. Something went wrong somewhere and a *Franks v. Delaware* defendant has to offer some explanation as to what went wrong; and, whether the warrant judge was given the full picture of the facts; and, whether the warrant judge, given that full picture, would have protected the Family by denying the warrant application.

The only way for Respondents to squarely meet the *essential elements* of the pled *Franks v. Delaware* claim is to offer evidence detailing the *totality* of the circumstances *known* to Lanpher when he swore out the warrant. Lanpher must offer some evidence as to the *truthfulness* and *completeness* of the warrant application he submitted compared to the *totality* of facts that he learned during the investigation up until he swore out the warrant application before the warrant judge.

Respondents can not meet their summary judgment *burden of persuasion* that their evidence "negates an *essential element* of the Family's claim" and that they are entitled to *judgment as a matter of law* if they never even try to put on evidence material to *any essential element* of the Family's pled claim.

Reader, please take a close look at the evidence and argument offered by Respondents in their motion for summary judgment at App. 47a-55a, and see that Respondents fail to meet their summary judgment *burdens of persuasion* on negating any *essential element* of the Family's claim and on proving entitlement to *judgment as a matter of law*, because the Respondents offer nothing on the *truthfulness* and *completeness* of

the sworn affidavit.

VI.

In their motion for summary judgment, Respondents attempted to defeat a never pled *Malley v. Briggs* facially invalid search warrant claim.

A *Malley v. Briggs* claim alleges that a "reasonably well-trained officer ... would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant." *Malley v. Briggs*, 475 U.S. 335, 345 (1986).

In such a case, the 42 U.S.C. §1983 plaintiff is claiming that the police officer submitted a warrant application that did not really demonstrate, on its face, probable cause.

In other words, the *Malley v. Briggs* plaintiff says that even though the warrant judge issued the warrant, the warrant applicant should be liable for a constitutional violation because the theoretical reasonable police officer would have known that the warrant application was facially invalid and that any warrant judge that approved it was making a mistake.

The Family never claimed that the warrant affidavit/application submitted by Lanpher was facially invalid. The Family never stated a *Malley v. Briggs* claim. To understand the Family's pled claim in plain language please read Pet.Cert., pp. 10-13.

The *Malley v. Briggs* defendant argues that the warrant demonstrated, on its face, a sufficient factual showing of probable cause. That is the exact argument that Respondents made in their summary judgment motion. App. 50a-53a.

As far as evidence, the Respondents repeated the same "facts" that Lanpher stated in his original warrant application. App. 48a-49a, ¶¶4-12. The Respondents then argued that those "facts" demonstrate probable cause and that Respondents get summary judgment.

As far as the Respondent's arguments in their summary judgment motion, they only cited a *Malley v. Briggs* case, *George v. City of St. Louis*, 26 F.3d 55 (8th Cir. 1994), *see* App.51a.; and a case even more inapposite to the pled claim, a warrantless entry case, *Cross v. City of Des Moines*, 965 F.2d 629 (8th Cir.1992). App. 52a. The Respondents cited not one *Franks v. Delaware* case, and the Respondents did not offer any evidence or argument on whether Lanpher gave an *honest* and *complete* picture of the *totality* of the circumstances *known* to him when he swore out the warrant.

VII.

In their motion for summary judgment, Respondents did not make a *Celotex* "absence of evidence" assertion. Respondents waited until their Reply Suggestions to make a *Celotex* "absence of evidence" assertion that was not supported by proof of insufficient discovery responses, and, that seems to violate the lawyer's professional duty of candor to the court.

As stated in the quoted passage from *Nissan Fire* on p. 9 above, Defendants moving for summary judgment can meet their summary judgment *burden of persuasion on the motion* by showing that the nonmoving Plaintiffs lack evidence of an *essential element* to carry

their ultimate burden of persuasion at trial. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)

Justice White was the fifth vote in the *Celotex* majority and his controlling[1] concurrence explained his view of how a moving party could make a *Celotex* "absence of evidence" assertion.

> "I also agree that the movant may rely on depositions, answers to interrogatories, and the like, to demonstrate that the plaintiff has no evidence to prove his case and hence that there can be no factual dispute. But the movant must discharge the burden the Rules place upon him: It is not enough to move for summary judgment without supporting the motion in any way or with a conclusory assertion that the plaintiff has no evidence to prove his case." *Celotex*, 477 U.S. 317, 328 (1986) (White, J., concurring)

The *Celotex* "absence of evidence" assertion is explained further in this passage:

> "...If the motion asserts that the opponent lacks proof to establish a requisite element of its case, as in *Celotex*, the movant must show the absence of facts, usually by producing relevant excerpts from the opponent's discovery responses, supplemented as needed by affidavits.
>
> ...[T]he movant owes a duty of candor to the court; it may not present only the portions of the record supporting its position while knowingly omitting evidence to the contrary that may raise

---

1. See *Celotex*, 477 U.S. 317, 329 (1986) (Brennan, J., dissenting)

> a genuine issue of material fact. Such conduct arguably warrants the imposition of sanctions under Fed. R. Civ. P. 11 or Rule 56(g)." SCHWARZER, HIRSCH & BARRANS, THE ANALYSIS AND DECISION OF SUMMARY JUDGMENT MOTIONS 46-47 (Federal Judicial Center 1991)

The *Celotex* "absence of evidence" assertion is an available method for a defendant to meet its summary judgment burdens of persuasion. However, in this case, the Respondents did not make a *Celotex* "absence of evidence" assertion and showing in their motion for summary judgment.

The Family, in their Suggestions in Opposition to the motion for summary judgment, put on enough admissible evidence on each *essential element* of the pled *Franks v. Delaware* claim for a reasonable jury to return a verdict in its favor.

Please review the Statements of Material Facts and the cited evidence in the Digest of the Family's Suggestions in Opposition. App. 56a-75a.

Please consider the *essential elements* of the pled *Franks v. Delaware* claim when reviewing the evidence.

Please also review the Family's *Franks* Corrected Affidavit and confirm that it is supported by the evidence and that no warrant judge would sign it. App. 166a-200a.

The Family offered evidence on the *truthfulness* and *completeness* of the warrant affidavit. Every piece of evidence relied on by the Family in the drafting their *Franks* Corrected Affidavit is properly in the summary

judgment record.

The Local Rule 56.1, Summary Judgment Motions, affords automatic Reply Suggestions to the movant, but denies automatic Sur-reply for the party defending the motion. App. 38a-39a.

Is that fair to allow *Celotex* "absence of evidence" assertions to debut in Reply Suggestions?

What if the *Celotex* assertion violates Justice White's and Judge Schwarzer's understandings that the movant support the assertion with proof that the other party gave insufficient answers to discovery requests or deposition questions; and, that the lawyer's duty of candor requires a *candid* assessment of the evidence in the record?

Should we not be wary of scribes who go around in robes in the marketplaces and accept seats of honor when they easily believe naked *Celotex* assertions by federal civil defendants?

The widow with the kicked-in house pays three courts' filing fees and she gets not one genuine Rule 56 review?

Conclusion

The Family Respectfully Requests this Court Grant this Petition for Rehearing of their Order denying the Petition for Writ of Certiorari.

The Family further Requests this Court Grant the Petition for Writ of Certiorari, even if such Grant summarily Vacates and Remands for Trial, or, for an Honest-to-God summary judgment analysis.

Respectfully Submitted,

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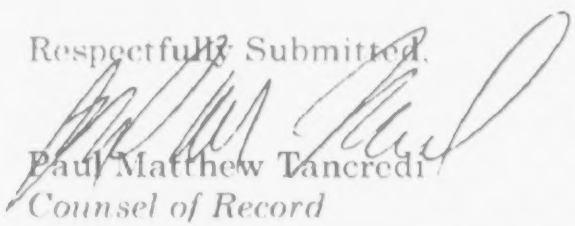
Counsel to Petitioners

Sup. Ct. R. 44 Certification of Counsel

I, Paul Matthew Tancredi, certify that this Petition for Rehearing is restricted to the grounds specified in Sup. Ct. R. 44, ¶2. Specifically, this Petition states other substantial grounds not previously presented in the Petition for Writ of Certiorari.

I also certify that I present this Petition for Rehearing in good faith and not for delay. My clients paid enough filing fees to warrant an honest Rule 56 review of this record by a capable federal judge.

Respectfully Submitted,



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Note on Appendix Pagination

The pages of the Appendix in this Petition for Rehearing are numbered in continuation with the Appendix in the Petition for Writ of Certiorari filed in the case.

The first page of the Appendix in the Petition for Writ of Certiorari is page "App. 1a," and the last page is "App. 213a."

This is the first page of this Appendix in this Petition for Rehearing and it is numbered "App. 214a."

Each succeeding page in this Appendix in this Petition for Rehearing is numbered consecutively, and the last page is "App. 245a."

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of the Family's Complaint

[Introduction, Preliminary Statement, Jurisdiction and Venue omitted]

Statement of Facts

19. Plaintiff, Rosalind Morris, (hereinafter, "Ms. Morris") resides in her home at 1318 East 62nd Street, Kansas City, Missouri 64110, (hereinafter, "Morris Home") and has so resided there at all times since she acquired said real property by the Warranty Deed filed August 5, 1994, with the Recorder of Deeds of Jackson County, Missouri, as Document Number 1994K-1153442.

20. Ms. Morris is the mother of Plaintiffs Terrance Morris, (hereinafter, "Terrance", born March 11, 1981, and now 24 years old), and Ricardo Morris, (hereinafter, "Ricardo", born June 24, 1979, and now 25 years old), and all of them enjoy a reputation in the community as responsible, law abiding, and gainfully employed citizens.

21. Ms. Morris, Terrance, and Ricardo, each and all, have never had any involvement with criminal activity and more particularly, any crimes involving violence, firearms, illegal commerce, or controlled substances, and none of them have any record of convictions for anything more serious than traffic ordinance violations or late payment of the fines assessed for the same.

22. On July 28, 2003, at approximately 11:00 PM, two assailants fired gunshots at the owner-resident (hereinafter, "Gunshot Victim") of 6206 Paseo, Kansas City, Missouri, an address several houses away from the Morris Home.

23. Minutes after the shooting, KCPD officers and paramedics responded to a 9-1-1 call placed by Gunshot Victim. Gunshot Victim suffered two serious gunshot wounds from which he has survived.

24. Before paramedics transported Gunshot Victim to the hospital, he reportedly told KCPD officers that two unknown black male suspects kicked in the back door and then shot him twice with a "9 millimeter" handgun.

25. The KCPD officers processing the crime scene subsequently sought to secure a search warrant for Gunshot Victim's home, and, within four hours after the shooting, obtained a warrant approved by a Jackson County Judge at 2:39 AM. on July, 29, 2003.

26. In processing the crime scene and executing the search warrant for Gunshot Victim's home, KCPD officers discovered that Gunshot Victim main-

tained an arsenal of weapons and ammunition including: two Bushmaster semi-automatic assault rifles; more than 700 rounds of ammunition for said assault rifles; a Mossberg 12-gauge shotgun which was stored under Gunshot Victim's bed with the safety set on "fire' and a live shell in the chamber; live shotgun shells; and ammunition and hardware suitable for weapons not then found, including 22-caliber long rifle ammunition and a magazine for a Colt 5.56 mm handgun..

27. In processing the crime scene and executing the search warrant for Gunshot Victim's home, police discovered evidence indicating that Gunshot Victim was likely involved in the illegal trafficking, distribution, sale, and use of mind-altering and illegal controlled substances including: an Ohaus CS-2000 digital gram scale with a white residue; a Rite Weight digital pocket balance with a white residue later analyzed to be Cocaine, a schedule II controlled substance; two plastic bags containing a leafy green substance later identified to be Marijuana, a schedule I controlled substance; and residual amounts of the same green leafy substance on a kitchen counter and the bedroom dresser, both of which indicated recent use and consumption of Marijuana by Gunshot Victim or visitors to his home.

28. In processing the crime scene and executing the search warrant, police also discovered indications that Gunshot Victim was remodeling the bungalow-sized home in a strange, garish, and ostentatious style not in keeping with its original layout; or, similarly sized homes in its immediate vicinity, including: installing an aquarium into the wall be-

tween the dining room and bedroom and viewable from both; installing a large screen TV into the living room wall; and, converting a bedroom into a hot tub room.

29. In processing the crime scene and executing the search warrant, police also found in Gunshot Victim's half of the shared easement garage, a boxed Jacuzzi tub, an air conditioning unit with severed wires and pipes indicating that it was probably stolen from its previous installation, and a four wheeler all-terrain vehicle.

30. Soon after the shooting, KCPD officers interviewed Gunshot Victim's next-door neighbor to the south and the neighbor reportedly stated: that he heard a shot; and, in looking out the window he could see and hear Gunshot Victim trying to summon help by making noise and calling out; that he responded to Gunshot Victim's cries for help by going downstairs and looking out his backdoor; and, that upon seeing indications of an intruder in Gunshot Victim's garage with a flashlight, he yelled "Police Officer," and caused that intruder to flee on foot.

31. The neighbor in paragraph 30 above reportedly further stated to KCPD officers that the house had been a drug house before Gunshot Victim moved in and that a white male (hereinafter, "J.L.") resided with Gunshot Victim, an African-American male. Reportedly, the neighbor further stated that he has never seen Gunshot Victim or J.L. go to work and that he sometimes saw them "loading up two 4-wheelers on a ramp."

32. On or about noon of July 29, 2003, the next day after the shooting, KCPD officers responded to a call from a neighboring resident who lived on the east side of The Paseo and across the median dividing The Paseo's northbound and southbound traffic lanes, who reportedly stated that he had seen J.L., identified as "the suspect of the assault," riding a yellow and white four wheel all-terrain vehicle, (hereinafter, "yellow ATV") in the driveway of Gunshot Victim's home and, that J.L. later sped away from the scene wearing a yellow and white helmet.

33. Approximately two hours later, a KCPD officer was waved down by a concerned motorist who then reportedly said that: earlier that day, he had been waiting for the traffic light at the intersection of Volker Boulevard and Troost Avenue when a white male, later confirmed to be J.L., arose out of Brush Creek riding a yellow ATV; and that, soon after J.L. appeared, a black and silver pistol fell from his pants and onto the street; and that, J.L. retrieved the firearm and sped from the scene.

34. As a result of the reports in paragraphs 32 and 33 above, an "all call for a party armed" went out to KCPD officers on patrol to alert them of the need to apprehend J.L..

35. Later that afternoon, J.L. led KCPD officers on a high speed pursuit through neighborhoods and highways in Kansas City, Missouri, while aboard the yellow ATV; such pursuit ended with the apprehension and arrest of J.L. by KCPD officers. While in the course of fleeing from KCPD officers on the yellow ATV, J.L. discarded a Smith & Wesson Model

SW9V semi-automatic handgun in the driveway of a residence in the 5800 block of Blue Hills Road in Kansas City, Missouri.

36. Many among the broadcast media in Kansas City found the facts of a high speed chase of a fleeing suspect on an ATV novel, notable, and notorious and, therefore, reported the event in their news programs soon thereafter. As a result, many in the general community knew of the high speed pursuit and arrest of a suspect aboard an ATV.

37. On or about 7:19 PM of July 29, 2003, and within a few hours of the arrest of J.L., KCPD Detective Jarrett Lanpher, ((hereinafter, "Defendant Lanpher"), interviewed Gunshot Victim at Research Medical Center, Kansas City, Missouri. This interview occurred less than 24 hours after Gunshot Victim: sustained the gunshot wounds, underwent emergency surgery and received anesthesia for the same; had very likely received significant amounts of medication for the alleviation of pain; and was also likely suffering from the mind-altering effects of recent and long term abuse of illegal drugs.

38. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly recalled the attack by first describing "two black males" as the assailants. Gunshot Victim reportedly also described his efforts to summon help by making noise and calling out after he had retreated to the basement of the house, and that, at one point, one attacker came to a broken basement window and threatened to try harder to kill Gunshot Victim, but only if he continued to make loud noise.

39. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that J.L. lived with him and that J.L. "hung with some dudes around the corner on east 62nd in a red brick house."

40. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that he did not know anything about assault rifles being in his home.

41. According to the written interview summary of Defendant Lanpher, at the conclusion of the interview, Defendant Lanpher reportedly asked Gunshot Victim to speculate about whether he knew any possible suspects, and that Gunshot Victim reportedly stated "Dink" and "Mont", two persons who Gunshot Victim reportedly believed to be acquaintances of J.L., even though Gunshot Victim did not identify anyone during the 9-1-1 call that he placed, or at the crime scene when emergency responders arrived, Defendant Lanpher now reported that Gunshot Victim claimed that he could identify his attackers.

42. "Dink" and "Mont" are the lifelong nicknames of Ricardo and Terrance, respectively; and Defendant Lanpher only learned their names from his interview of J.L. that he conducted consequent to J.L.'s arrest and not long before the interview with Gunshot Victim. Defendant Lanpher's claim in his interview summary that Gunshot Victim spontaneously spoke their names or nicknames is false. In fact, Defendant Lanpher introduced their names into the conversation. Further, the Morris Home is not the red brick house described by Gunshot Victim in

paragraph 39 above. The Morris Home is neither red nor brick.

43. On or about 10:20 AM of July 30, 2003, and approximately 36 hours after the shooting, Defendant Lanpher returned to Gunshot Victim's hospital room and while Gunshot Victim faced the same memory diminishing factors outlined in paragraph 37 above.

44. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly recognized Ricardo in a photo lineup of six subjects, reportedly weakly scrawled his initials on the back of the photo as an acknowledgement, and reportedly claimed that Ricardo was one of his attackers. In preparing the photo lineup, Defendant Lanpher purportedly conducted a law enforcement computer check of Terrance and Ricardo. That computer check would have made it plainly obvious to Defendant Lanpher that neither Terrance nor Ricardo have any history or criminal record of prior and similar bad acts.

45. According to the written interview summary of Defendant Lanpher, Gunshot Victim reportedly said that he had no idea why anyone would want to attack him, and that all he does for a living is buy, fix-up, and then sell, houses.

46. On or about 1:29 PM of July 30, 2003, Defendant Lanpher, presented, subscribed and swore an Affidavit/Application for a Search Warrant before a Jackson County Judge, who then issued a search warrant to enter the Morris Home and to search for

"Clothing, handguns, rifles, ammunition, spent shell casings, trace evidence, flashlights."

47. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth, omitted facts that were material to a finding of probable cause for the single reason that such omitted facts were exculpatory, and therefore, would, if not omitted, negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor.

48. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth, intentionally cast a false light on exculpatory and material facts for the sole purpose of making such facts appear inculpatory, and for the single reason that such facts, if seen in a true light, would negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor. One clear example of this technique is that Defendant Lanpher included the Affidavit that "a computer check was conducted." Any computer check of Terrance and Ricardo would show no criminal history, but Defendant Lanpher did not disclose that probative exculpatory information. Instead, he cast the fact of the computer check in the false light of the implication that judges and prosecutors would inevitably draw if an affiant officer made mention of a computer check of a suspect in a warrant application, that, the officer had verified the suspect's criminal history for prior and similar bad acts.

49. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth intentionally cast his narrative recitation of the facts into a false chronology for the sole purpose of creating a false impression that probable cause may have existed in consideration of the totality of the circumstances, and for the single reason that, such facts, if understood in their true chronology, would, in consideration of the totality of the circumstances, be material and negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor.

50. In presenting the Affidavit in paragraph 46 above, Defendant Lanpher knowingly, deliberately, and with reckless disregard for the truth intentionally practiced the artifices and deceptions described in paragraphs 47, 48, and 49 above for the sole purpose of combining their effects and creating a false impression that probable cause may have existed in consideration of the totality of the circumstances, and for the single reason that, if he had not practiced the artifices and deceptions described in paragraphs 47, 48, and 49 above, the absence of their combined effect would, in consideration of the totality of the circumstances, negate a finding of probable cause before a conscientious, objective, and reasoning magistrate or prosecutor.

51. Defendant Lanpher, knowingly, deliberately and with reckless disregard for the truth practiced the acts described in paragraphs 47, 48, 49, and 50 with the intent of deceiving both the Assistant Jackson County Prosecutor and the Jackson County

Judge who approved the warrant application into a finding of probable cause when no objective and reasonable officer would have believed that it existed.

52. The intentional deceptions of Defendant Lanpher described in paragraphs 47, 48, 49, 50, and 51 are known to the plaintiffs; and, upon information and belief, all or some of the unverified facts asserted by Defendant Lanpher in presenting the Affidavit described in paragraph 46 above are false; and, evince the same intent to deceive both the Assistant Jackson County Prosecutor and the Jackson County Judge who approved the warrant application into a finding of probable cause when no objective and reasonable officer would have believed that it existed.

53. Included in the unverified facts described in paragraph 52 above, are any facts stated in Defendant Lanpher's interview summaries referenced in paragraphs 38, 39, 40, 41, 44, and 45 above.

54. Soon after the warrant issued, the KCPD assembled a Tactical Entry Team, (hereinafter, "KCPD 630-Squad") to execute it at the Morris Home. Sergeant Mark Hockemeier, (hereinafter, Defendant Hockemeier") was present as the senior member of the KCPD 630-SQUAD. Officer Anthony Hernandez, (hereinafter, "Defendant Hernandez") and Officer Ryan Bronner, (hereinafter, "Defendant Bronner") were present as members of the KCPD 630-SQUAD. Defendant Lanpher and his supervisor, Sergeant Robert Schweitzer, (hereinafter, "Defendant Schweitzer") were also present, as well as other KCPD patrol officers supporting the operation.

55. Terrance was the only person present inside the Morris Home when the KCPD 630-SQUAD prepared to execute the search warrant. Terrance was in the basement, a normally occupied area of the Morris Home.

56. On or about 2:33 PM of July 30, 2003, KCPD 630-SQUAD knocked on the door of the Morris Home. Terrance heard the knock and immediately proceeded up the stairs to answer the door. Terrance first believed that it was his mother Ms. Morris arriving home from work and that she may have groceries that he should carry into the house, because otherwise, she would use the key to enter without knocking.

57. A mere ten seconds from the time of knocking, Defendant Bronner used a battering ram to bust down the door of the Morris Home, and the entire KCPD 630-SQUAD crashed inside wearing full armor and with weapons drawn.

58. Terrance had proceeded as far as the top of the stairs of the basement and was entering the kitchen area of the home when he saw and heard the horrifying scene of the KCPD 630-SQUAD crashing into his home with weapons drawn and moving rapidly towards him.

59. Terrance was stunned, silent, and confused by the conflicting orders that he was given to: "Show Your Hands!" "Freeze!" and "Get Down!" Defendant Hernandez was the KCPD 630-SQUAD point man, meaning that he was the first one to proceed through the house and the first to encounter Terrance. Although Defendant Hernandez would later describe

Terrance as resembling a "deer in the headlights" because he was stunned, motionless, and offering no resistance; Defendant Hernandez forcibly tackled Terrance to the ground. Defendant Hernandez announced to other KCPD 630-SQUAD officers that Terrance was clearly unarmed before proceeding to search other portions of the Morris Home.

60. Two other KCPD 630-SQUAD officers observed that Terrance was on the floor, scared, motionless, offering no resistance, and unarmed, and immediately moved on past him to search other areas of the Morris Home.

61. Defendant Hockemeier, the senior and highest ranking officer of KCPD 630-SQUAD, saw Terrance on the floor and kicked him straight in the mouth, causing a painful laceration-contusion injury, and the pooling of blood on the kitchen floor and around Terrance's face as he was made to lay on the kitchen floor while the KCPD 630-SQUAD ransacked the Morris Home.

62. Ms. Morris arrived at the Morris Home while the KCPD 630-Squad was storming through it. Ms. Morris pulled into the driveway, which KCPD officers had failed to secure; and, as she proceeded towards the house, she noticed a suspicious looking person lurking towards the rear of the home for no reason known to her. She then encountered an officer who warned her that if she had went into her home; she could have been "shot."

63. KCPD officers ordered Ms. Morris away from the house, to the other side of her car, and to remain in the driveway. Defendant Lanpher approached her

and undertook to explain why her home was being invaded and violently searched by the KCPD 630-SQUAD He delivered the shocking news that her sons were suspected in the shooting of Gunshot Victim.

64. Confronting the shock of her home being ransacked and the greater shock that her sons were suspected of a violent crime. Ms. Morris, fully informed of Terrance and Ricardo and their character and reputation, and, fully aware of the fact that they have never been criminals, told the officers that her "boys would not do that."

65. At that point, Defendant Schweitzer, maliciously, unnecessarily, and with reckless disregard for the truth, derided and impugned Ms. Morris's parenting ability, and her sons' respective characters, at one point telling her, "Evidently Miss Morris, you do not know what goes on in your house when you are at work."

66. Defendant Lanpher then told Ms. Morris about Terrance's injury and that a MAST ambulance would respond. In so reporting, Defendant Lanpher knowingly, deliberately and with reckless disregard for the truth, and for the sole purpose of concealing the wrongful acts of members of the KCPD 630-SQUAD told Ms. Morris that Terrance had "resisted arrest."

67. After medical treatment by MAST, KCPD officers removed Terrance, in restraints, from the house; placed him into a KCPD vehicle; and transported him from the Morris Home. Ms. Morris and all members of the community then present were

witness to these humiliating and reputation damaging events.

68. No single item was seized pursuant to the Search Warrant.

69. When Ms. Morris was finally allowed to enter her own home, she discovered that her front door and its frame were severely damaged by Defendant Bronner and the KCPD 630-SQUAD, and that the Morris Home was in complete disarray with just about everything in the house removed from its normal storage and thrown about the house.

70. When Defendant Lanpher departed from the Morris Home, he left a phone number and directions for Ricardo to call and assist with the investigation.

71. Terrance was booked, detained, and questioned.

72. After Ms. Morris made contact with Ricardo, he reported to Police Headquarters for detention and questioning. In response to a question as to his whereabouts on the night of the shooting, he informed Defendant Lanpher that he was at work.

73. Defendant Lanpher easily verified with Ricardo's employer that Ricardo was at work at the time of the shooting, and then released Terrance and Ricardo from jail. Following Terrance's release, Ms. Morris transported him to Research Medical Center for treatment of his injury.

74. Ms. Morris, Terrance, and Ricardo reported the incident to the Defendant Board by filing a complaint with its Office of Citizen Complaints (hereinafter, "OCC") in the days immediately following the

KCPD 630-SQUAD's forceful and unnecessary invasion of the Morris Home.

75. As a result of the complaint, OCC directed, or, should have directed, the KCPD Internal Affairs unit to investigate the following: the deliberately misleading affidavit and the invalid search warrant issuing therefrom; the thoughtlessly immediate deployment of the KCPD 630-SQUAD to crash into the home of citizens who no reasonable officer could suspect of the robbery and shooting of an apparent drug dealer in his armed fortress; the excessive force used against a completely defenseless and non-resisting citizen in his own home; and the malicious, unfounded, and unnecessary disrespect, slander, and discourtesy shown by Defendant Schweitzer towards a mother who is already suffering the trauma of witnessing the KCPD invade her home and falsely accuse her sons.

76. The KCPD Internal Affairs investigation ordered by Defendant Board was purposefully inadequate in that no attempt was made to address the primary issue of the complaint, the fact that the KCPD 630-SQUAD invaded the Morris Home only because of the existence of a Search Warrant that would not have issued, but for the violation of rights secured under the Fourth and Fourteenth Amendments of the United States Constitution.

77. The KCPD Internal Affairs investigation ordered by Defendant Board was purposefully inadequate in regards to the narrow issues purportedly investigated, the use of excessive force by members of KCPD 630-SQUAD, and the malicious discourtesy

demonstrated by Defendant Schweitzer, in that no attempt was made to fairly and critically assess the credibility of the KCPD Officers and their statements. In sharp contrast, the same investigators confronted Terrance, Ricardo, and Ms. Morris with heightened scrutiny, skepticism, and aggressive challenges to their credibility, including a polygraph examination, all of which they endured in fully cooperating with the investigation.

78. Defendant Lanpher, Defendant Hockemeier, Defendant Schweitzer, Defendant Bronner, and Defendant Hernandez, each and all, knowingly, deliberately, and with reckless disregard for the truth intentionally failed to be truthful and forthright in statements of report and following the KCPD 630-SQUAD entry and in the KCPD Internal Affairs investigation for the sole purpose of concealing their own wrongful acts and the wrongful acts of fellow KCPD officers, and for the single reason that if they, each and all, had been truthful and forthright in statements of report following the KCPD 630-SQUAD entry and in the KCPD Internal Affairs investigation, their wrongful acts and the wrongful acts of other KCPD officers would have been discovered by a competent investigator.

79. Defendant Lanpher and his supervisor Defendant Schweitzer, apparently made no further effort to solve the shooting of Gunshot Victim after their misguided decision to direct the KCPD 630-SQUAD to break into the Morris Home on July 30, 2003, and, as of October of 2003, they officially inactivated the investigation due to Gunshot Victim's

complete refusal to cooperate with KCPD efforts to solve the crime.

COUNT I

Against Defendant Lanpher for Illegal Affidavit/ Application for Search Warrant and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

80. Plaintiffs incorporate by reference paragraphs 1 through 79 of this complaint as if fully set forth in this paragraph.

81. By his actions described in the above referenced paragraphs and further set forth below regarding the Affidavit/Application for a Search Warrant for the Morris Home, and, by 42 U.S.C. § 1983, Defendant Lanpher acted under color of state law and subjected the plaintiffs, or, caused the plaintiffs to be subjected to, the deprivation of a right or rights secured by the Constitution or laws of the United States, including those specifically secured by the Fourth and Fourteenth Amendments of the United States Constitution.

82. In regards to the Affidavit/Application for a Search Warrant for the Morris Home, Defendant Lanpher violated clearly established law.

83. As a KCPD officer, Defendant Lanpher is charged with knowing established law and the rights secured by the Constitution or laws of the United States and held by citizens he encounters in the course of his duties.

84. KCPD Legal Bulletin No. 98-2 puts all KCPD Officers on notice of the legal requirements for honesty and disclosure of exculpatory facts in

Search Warrant Affidavit/Applications.

85. In regards to the Affidavit/Application for a Search Warrant for the Morris Home, Defendant Lanpher is not entitled to qualified immunity or official immunity.

86. In regards to the Affidavit/Application for a Search Warrant for the Morris Home, Defendant Lanpher's actions were not objectively reasonable.

87. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, a search warrant issued to search the Morris Home when probable cause was lacking and when no objectively reasonable affiant would have believed it existed.

88. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, Plaintiffs suffered deprivation of: their right to be free from an illegal search of their home; and, their right to due process of law.

89. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, the KCPD 630-SQUAD executed the illegal warrant with an unnecessarily violent, destructive, and dangerous invasion of the Morris Home that damaged the Plaintiffs by causing bodily injury, property damage, and emotional distress.

90. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, Plaintiff Terrance Morris was subject to further deprivation of right by the use of excessive force by members of the KCPD 630-Squad.

91. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant and his actions to secure the false facts and misrepresentations included in the same, Plaintiffs Terrance and Ricardo have lived in continuous fear that Gunshot Victim, an apparent criminal with deadly weapons, might believe the idea planted in his head by Defendant Lanpher, and seek revenge and retaliation against them even though they had nothing at all to do with the shooting of Gunshot Victim.

92. As a direct and proximate result of Defendant Lanpher's illegal Affidavit/Application for a Search Warrant, Plaintiffs have suffered damage to their reputation resulting from the spectacle of the KCPD 630-SQUAD forcibly invading their home.

93. The acts of Defendant Lanpher as described above were intentional, malicious, and, resulted from his reckless and callous indifference to: Plaintiffs' Constitutional rights, the sanctity of the Morris Home; and, the natural and probable consequential dangers to property and person that result when an illegal and unnecessary search warrant issues and the KCPD 630-SQUAD is deployed to crash into the lives of law-abiding citizens who are momentarily under suspicion only because of his dishonest and incompetent investigatory techniques.

94. Exemplary damages are warranted, and, necessary to discourage Defendant Lanpher and his KCPD colleagues from future and further deprivation of right resulting from illegal Affidavit/Application for Search Warrant practices and

procedures.

95. Plaintiffs seek an award for attorney's fees and costs pursuant to 42 U.S.C. § 1988.

ON THE FACTS ABOVE, Plaintiffs pray for judgment against Defendant Lanpher for: compensatory damages in an amount that is fair and reasonable; attorney's fees and costs; exemplary damages; and such other relief as the Court deems just and proper.

COUNT II

Against Defendant Schweitzer for Failure to Supervise Defendant Lanpher and Resulting Deprivation of Right, Cognizable under 42 U.S.C. § 1983

96. Plaintiffs incorporate by reference paragraphs 1 through 95 of this complaint as if fully set forth in this paragraph.

97. By Defendant Schweitzer's actions described in the above referenced paragraphs and further set forth below regarding his failure to properly supervise Defendant Lanpher during their investigation into the shooting of Gunshot Victim, and, by 42 U.S.C. § 1983, Defendant Schweitzer acted under color of state law and subjected the plaintiffs, or, caused the plaintiffs to be subjected to, the deprivation of a right or rights secured by the Constitution or laws of the United States, including those specifically secured by the Fourth and Fourteenth Amendments of the United States Constitution.

98. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defen-

dant Schweitzer was Defendant Lanpher's immediate supervisor in the KCPD Violent Crimes Unit.

99.. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defendant Schweitzer directly participated by reviewing, authorizing, and approving acts of Defendant Lanpher the led to deprivation of right.

100. At the time that Defendant Schweitzer supervised Defendant Lanpher; he knew that his peer and subordinate KCPD officers would sometimes swear out Affidavit/Applications for Search Warrants that included deliberately false and misleading information and, that failed to disclose exculpatory facts then known to the affiant.

101. At the time that Defendant Schweitzer supervised Defendant Lanpher, he knew that his peer and subordinate KCPD officers would sometimes circumvent the Constitutional framers' intention that the magistrate with the authority to issue warrants upon a finding of probable cause would make such finding upon consideration of the facts then known by the affiant.

102. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defendant Schweitzer demonstrated deliberate indifference to; or, gave his tacit authorization to; the acts of Defendant Lanpher the led to deprivation of right.

103. In regards to the Defendant Lanpher's investigation into the shooting of Gunshot Victim, Defendant Schweitzer failed to take remedial action to correct or prevent the acts of Defendant Lanpher the

led to deprivation of right.

104. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, a search warrant issued to search the Morris Home when probable cause was lacking and when no objectively reasonable affiant would have believed it existed.

105. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, Plaintiffs suffered deprivation of: their right to be free from an illegal search of their home; and, their right to due process of law.

106. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, the KCPD 630-SQUAD executed the illegal warrant with an unnecessarily violent, destructive, and dangerous invasion of the Morris Home that damaged the Plaintiffs by causing bodily injury, property damage, and emotional distress.

107. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, Plaintiff Terrance Morris was subject to further deprivation of right by the use of excessive force by members of the KCPD 630-SQUAD.

108. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher and prevent that defendant's actions to secure the false facts and misrepresentations included in the illegal Affidavit/Application for a Search Warrant, Plaintiffs Terrance and Ricardo have lived in continuous fear that Gunshot Victim, an apparent

criminal with deadly weapons, might believe the idea planted in his head by Defendant Lanpher, and seek revenge and retaliation against them even though they had nothing at all to do with the shooting of Gunshot Victim.

109. As a direct and proximate result of Defendant Schweitzer's failure to supervise Defendant Lanpher, Plaintiffs have suffered damage to their reputation resulting from the spectacle of the KCPD 630-SQUAD forcibly invading their home.

110. In regards to Defendant Schweitzer's failure to supervise Defendant Lanpher, Defendant Schweitzer violated clearly established law.

111. As a KCPD officer in a supervisory capacity, Defendant Schweitzer is charged with knowing established law and the rights secured by the Constitution or laws of the United States and held by citizens that he and his subordinates encounter in the course of their duties.

112. In regards to Defendant Schweitzer's failure to supervise Defendant Lanpher, Defendant Schweitzer is not entitled to qualified immunity or official immunity.

113. In regards to Defendant Schweitzer's failure to supervise Defendant Lanpher, Defendant Schweitzer's actions were not objectively reasonable.

114. Defendant Schweitzer was present and participated in the execution of the Search Warrant for the Morris Home, instead of properly supervising Defendant Lanpher; he performed the wrongful acts more fully described in paragraph 65 above.

115. The acts of Defendant Schweitzer as described above were intentional, malicious, and, resulted from his reckless and callous indifference to: Plaintiffs' Constitutional rights, the sanctity of the Morris Home; Ms. Morris's reasonable expectation to be free from malicious and unfounded discourtesy and slander from an officer who does not know the facts, and, the natural and probable consequential dangers to property and person that result when an illegal and unnecessary search warrant issues and the KCPD 630-SQUAD is deployed to crash into the lives of law-abiding citizens who are momentarily under suspicion only because of his and his subordinates' dishonest and incompetent investigatory techniques.

116. Exemplary damages are warranted, and, necessary to discourage Defendant Schweitzer and his KCPD colleagues from future and further deprivation of right resulting from the failure to properly supervise Affidavit/Application for Search Warrant practices and procedures.

117. Plaintiffs seek an award for attorney's fees and costs pursuant to 42 U.S.C. § 1988.

ON THE FACTS ABOVE, Plaintiffs pray for judgment against Defendant Schweitzer for: compensatory damages in an amount that is fair and reasonable; attorney's fees and costs; exemplary damages; and such other relief as the Court deems just and proper.

[Remainder of Complaint omitted]

Dated: April 21, 2005 Respectfully submitted,

/s/ Paul Matthew Tancredi
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Terrance Morris, et al., Plaintiffs,	)	
vs.	)	No. 05-0362-CV-W-FJG
Jarrett Lanpher, et al., Defendants.	)	

Digest of Jointly Proposed Jury Instructions

Paul Matthew Tancredi, for all Plaintiffs, and Matthew Briesacher, Assistant Attorney General for the State of Missouri for all Defendants, by Rule 51, Local Rule 51.1 and the Court's order, now jointly propose those jury instructions to which they have agreed. The instructions are attached as Exhibits A & B, with Exhibit B being a clean copy.

Dated: February 1, 2007 Respectfully submitted,

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Attorneys for Detectives

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the United States District Court and a copy of the Notice of Electronic Filing of the above document was transmitted via e-mail this 1st day of February, 2007, to:

Matthew Briesacher
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 645102

/s/ Paul Matthew Tancredi
Attorney for Plaintiffs

INSTRUCTION NO._____

Your verdict must be for plaintiffs Rosalind, Terrance and Ricardo Morris and against defendant Lanpher if all the following elements have been proved by the preponderance of the evidence:

First, defendant Lanpher swore an affidavit/ application for search warrant in which he made false statements or omitted truthful information that created a falsehood; and

Second, defendant Lanpher made those omissions or false statements either deliberately or with a reckless disregard for the truth; and

Third, those omissions or false statements were material, or necessary, to determining whether or not probable cause for the search warrant existed, and

Fourth, plaintiffs suffered damages as a direct result of defendant Lanpher's actions.

The Fourth Amendment requires police officers to swear an oath or affirmation which establishes probable cause to get the permission the search warrant represents. To be valid, a search warrant must be based probable cause to believe that evidence, instrumentalities, or fruits of a crime, contraband, or a person for whose arrest there is probable cause may be found in the place to be searched. Probable cause for a warrant exists only when the totality of the circumstances provides sufficient facts to lead a prudent person to believe there is a fair probability that contraband or other evidence of a crime will be found at the location identified in the search warrant. The

officer must honestly believe or appropriately accept that all included information is true, and he cannot omit information clearly critical to a probable cause determination.

If any of the above elements has not been proved by the preponderance of the evidence, then your verdict must be for defendant Lanpher.

Instruction No. 16

8th Circuit Model Civil Jury Instruction 4.10 (modified); UNITED STATES CONSTITUTION, Amendment IV; *Franks v. Delaware*, 438 U.S. 154 (1978); *Illinois v. Gates*, 462 U.S. 213 (1983); *Hunter v. Namanny*, 219 F.3d 825 (8th Cir. 2000); and *Warden v. Hayden*, 387 U.S. 294 (1967).

This proposed instruction is agreed upon by the parties

INSTRUCTION NO. _____

If you find in favor of plaintiffs Rosalind, Terrance and Ricardo Morris on their claim against defendant Lanpher as submitted in Instruction Number _____, then you must consider plaintiffs' claim against defendant Schweitzer.

Your verdict must be for plaintiffs if all of the following elements have been proved by the preponderance of the evidence:

First, defendant Lanpher violated plaintiffs' constitutional rights;

Second, that defendant Schweitzer failed to provide adequate supervision of defendant Lanpher; and

Third, the failure of defendant Schweitzer to provide adequate supervision caused injury to the plaintiffs.

Instruction No. 19

§165.26 (modified), Federal Jury Practice and Instructions, Fifth Edition; *Otey v. Marshall*, 121 F.3d 1150 (8th Cir. 1997).

This proposed instruction is agreed upon by the parties.